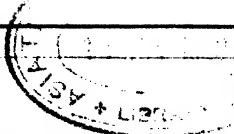


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AGE OF CONSENT COMMITTEE

EVIDENCE

1928-1929

Volume VI

Oral Evidence and Written Statements
of
Witnesses from Bengal Presidency.



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Khan Bahadur Maulvi Muhammad Ismail, M.L.C., Public Prosecutor and Chairman, District Board, Mymensingh.

Rai Bahadur Keshab Chandra Banerjee, Chairman, District Board, Dacca.

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THE AGE OF CONSENT COMMITTEE.

QUESTIONNAIRE.

NOTE.—The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code ?

2. What are the circumstances which in your opinion justify—

- (1) retaining the law of the Age of Consent as it is, or
- (2) making an advance on the present law.

3. Are crimes of seduction or rape frequent in your part of the country ? Has the amendment of the law made in 1925 raising the age of consent to 14 years, succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes ? If not, what measures would you propose to make the law effective ?

4. Has the amendment of 1925 raising the age of consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit—

- (1) by postponing the consummation of marriage,
- (2) by stimulating public opinion in that direction, or
- (3) by putting off marriage beyond 13.

If not, what steps would you propose to make it effective ?

5. What is the usual age at which girls attain puberty in your part of the country ? Does this differ in different castes, communities or classes of society ?

6. Is cohabitation common in your part of the country among any class or classes of people—

- (1) before puberty,
- (2) soon after puberty,
- (3) before the girl completes 13 years.

Do any of these cases come to Court ?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction ? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach ?

8. Is "Gaona" or "Garbladan" ceremony usually performed in your part of the country ? If so, does it coincide with or is it anterior to the consummation of marriage. Is it performed generally after the attainment of puberty and how soon after it ?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before, puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the age of consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—The bracketted portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.

SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case herein-after excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions.—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both).

Section 376-A.

376-A. *Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Extracts from the Code of Criminal Procedure 1898, Schedule II.

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Of Rape.

XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the 1st instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
1	2	3	4	5	6	7	8
376	<p>Rape— (If the sexual intercourse was by a man with his own wife not being under 12 years of age.) If the sexual intercourse was by a man with his own wife being under (12) 13 years of age. In any other case</p>	<p>(Shall not arrest without warrant.)</p> <p>Shall not arrest without warrant.</p> <p>May arrest without warrant.</p>	(Summons)	(Bailable)	(Not compoundable.)	(Imprisonment of either description for 2 years, or fine, or both).	(Court of Session, Chief Presidency Magistrate or District Magistrate.)
					Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
				Not bailable	Do.	Do.	Court of Session.
376A.	<p>Illicit married intercourse by husband with wife not under 13 and under 14 years of age.</p>	<p>Shall not arrest without warrant.</p>	(Summons)	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magistrate or Magistrate of the first class.

BENGAL EVIDENCE

**Written Statement of Mr. AMAR NATH DATT, B.A., B.L., M.L.A.,
Advocate, High Court, dated 13th August 1928.**

1. The dissatisfaction if any is only to be found amongst that section of the educated community who are for social reforms.

2. An advance on the present law is justified owing to cases of abduction and trafficking in minor girls, as also to protect girl wives being mothers at an early age, although on principle I am opposed to legislation on social matters.

3. Cases of seduction and rape in East Bengal is of daily occurrence, and the Amendment of 1925 has not checked it for which the policy of the Government is responsible. The measures, I would suggest, will be against that policy and it is useless to suggest the same in the present attitude of the Government.

4. The Amendment of 1925 has not achieved the 3 objects and such legislation can be hardly expected to achieve the objects in view, which led me to oppose the bill in the Legislative Assembly for which Miss Katherine Mayo has found fault with me in her dirty book.

I would increase the marriageable age of girls to 16 and of boys to 22 and make cohabitation punishable before 18 in non-marital cases.

5. The usual age of attaining puberty is 14-16 years but that should not be the criterion to fix the age of consent.

6. The answer is 'No' to all the 3 questions and during my experience of a quarter of a century, at the bar, not a single case came to my knowledge.

7. I do not think that religious injunction, if any, plays any part, in these days in the case of consummation of marriage in Bengal. Only among the lower castes where brides are purchased, early consummation of marriage is to be found and the evil can be put down by raising the marriageable age of girls.

8. In my part of the country 'Gaona' or 'Garbhadhan' ceremony is not in vogue.

9. I do not think attainment of puberty is an indication of physical maturity for consummation of marriage. I would fix the age at 18.

10. At 18.

11. The general weak health and various female diseases which is so common among the Bengalee women, is due to cohabitation before full physical development and there is hardly a Bengali home, which is free from it. The instances are too numerous, for a detailed description.

12. Yes, it has greatly retarded the physical and intellectual progress of the Bengalee race.

13. No.

14. Not generally, only in some cases of fond uneducated mothers, it may be so.

15. The difficulty is almost insurmountable, and legislation for free grant of birth certificates by local authorities is necessary.

16. I do not think so.

17. Yes, in cases of non-marital relationship the punishment should be more severe.

18. Yes, in cases of marital state, no one, except guardians under the law, should be allowed to be complainants.

19. I am unable to suggest any such safeguards.

20. No; there is really no public opinion in the matter. I would prefer the latter alternative.

21. I would prefer the latter, but considering the indifference of the general public in the matter strengthening of the penal law is desirable.

Oral Evidence of Mr. AMAR NATH DATT, M.L.A., Advocate, High Court.

(Delhi, 11th October 1928.)

Chairman : How long have you been at the bar ?

A. For 25 years.

Q. Are you connected with any social reform movement ?

A. No. I am the president of the Arya Samaj, Burdwan.

Q. In answer to Q. 3 you say cases of seduction and rape are very common and the amendment of 1925 has not checked it for which the policy of the Government is responsible. What is that policy ?

A. I believe that Government does not take any interest in matters which affect the people of the country socially or educationally.

Q. Do they fall under the general category or special category ?

A. Their attitude is not one of indifference but hostility at least towards a section of the Indian people, Hindus of East Bengal. Socially and politically Government try to give them pin pricks on every occasion possible.

Q. If seduction and rape are not checked what has that got to do with it ?

A. The police officers do not take any interest in detecting crimes or in detecting men who have seduced girls and they know they are perfectly safe because Government does not want that this should be done.

Q. Is it not open to men to go to a magistrate ?

A. It is, but the magistrates are of the same mood. I charge the whole executive. Our own countrymen also do anything under the dictates of the European magistrates.

Q. What are the measures that you would suggest ?

A. I would suggest the replacement of European magistrates, with magistrates of an impartial frame of mind towards the Hindus and also of the police officers with officers of impartial frame of mind.

Q. How would you check seduction ?

A. Because in that case there will be more detection of crime.

Q. How is it to be known before selection whether the officer is impartial or not ?

A. That has to be tried. You have to make a selection not from the members of this slave dynasty whose sons seek service and whose fathers and grandfathers have sought Government favour. I would suggest that it should be by open competitive examination with credentials received from respectable people of the province.

Q. Do you mean to say that in Bengal for the P. C. S. there is no competitive examination ?

A. There is competition but we believe there are several things which do away with the real effect of competition. It is open to suspicion. We do not believe in the way these competitive examinations are conducted. I know of one case where it happened.

Q. In answer to Q. No. 18 you want complaints to be restricted to guardians. Guardians under the law means father or in his absence mother.

A. Yes.

Q. Don't you think they are the most interested people in not bringing in complaints and your complaint that the law has not been effective is due to that ?

A. It may be but by guardian I do not mean the guardian of the husband but the guardian of the girl.

Q. Even the guardian of the girl is not interested in bringing complaints ?

A. That is not always the case.

Q. Would you not give the right to general public ?

A. No.

Q. Do you think that would make the law effectual ?

A. Not as effectual as you would like to have it made but at least that will be some check in those cases.

Q. Do you mean this with regard to the age of consent or in regard to marriage law ?

A. I mean breach of the age of consent.

Q. I want to know whether your answer to Q. No. 18 pertains to the law of marriage or to the law of the age of consent ?

A. I think it applies to both.

Q. You mean to say whether a girl is married or not her guardian will be entitled to a right of complaint and no one else ?

A. Yes.

Q. In Q. No. 21 you say that strengthening of the penal law is more desirable. You want the age of consent to be strengthened ?

A. I want it to be raised higher. I would personally make it 18 in the case of girls and 21 in the case of boys but considering the orthodox opinion and considering that we have no right to thrust our own enlightened views on our less enlightened countrymen I think a *via media* may be found out and it may be fixed at 16.

Q. I would draw your attention to para. 4. You say 'I would increase the marriageable age of girls to 16 and of boys to 22 and make cohabitation punishable before 18 in non-marital cases' would you modify that ?

A. Personally I would raise it to 22 but considering the volume of opinion in the country I would let it remain at 18 in non-marital cases.

Q. You said the age of consent should be raised to 16 ?

A. Yes.

Q. In answer to Q. 4 you have said that in the Assembly you opposed the Bill because the Amendment of 25 has not and cannot achieve the object that was expected of it ?

A. Because I believe that an alien Government when it imposes legislation upon a people who are not advanced educationally it can hardly expect the observance of that law.

Q. Do you think it has been effective in that way ?

A. No.

Q. And by raising the age to 16 it will be made effective ?

A. Yes. Because between 12 and 13 there is little difference but a girl of 16 can be recognised.

Dr. Beadon : In answer to Q. 11 you have said that the general weak health and various female diseases which are so common among the Bengali women are due to cohabitation before full physical development and there is hardly a Bengali house which is free from it. Would you give us details of one or two cases that have come to your personal knowledge in which early cohabitation has been injurious ?

A. In one case the girl died at the age of 12 years not being able to deliver a child. She would have been a mother but at the time of delivery she died. I

know at least half a dozen cases where girls died before 15 either after delivery or because they could not deliver the children. I may tell you that almost every year I hear of one or two cases among people who are known to me of deaths of girls below 15 occurring.

Q. Are these delivered in hospital ?

A. No. Only in cases in which they are wealthy Assistant Surgeon treats them but in villages there is ordinarily dai who is available.

Q. What about the babies in these cases ? Do they live ?

A. I have not known a single case in which the child has lived. Either there as a still-born child or there was no delivery or the child died.

Q. Do you think that the children of girl mothers who live are fairly healthy ?

A. They are certainly not healthy physically but as regards their intellectual capacity I am not quite sure because it may be that they would have been more intelligent had they been born a year or two later.

Mrs. Nehru / You say there are cases of abduction and trafficking of minor girls. In which part is this prevalent ?

A. It is in East Bengal.

Q. What is generally the class of girls abducted ?

A. Beginning with Brahman widows all the girls are abducted.

Q. Are they from respectable families ?

A. They are of higher castes.

Q. How are they so much unprotected as to fall a prey to these seducers ?

A. These cases generally occur in villages where the purdah is not observed and among the orthodox people girls, especially widows, generally go about and whenever a young man takes fancy upon a girl he at once devises means to carry her off.

Q. Do they do it for the sake of selling ?

A. They do it for the sake of getting some money.

Q. May I know if most of these girls are widows ?

A. Not necessarily. Sometimes wives of poor men are abducted and sometimes unmarried girls.

Q. What is generally the age of girls who are abducted ?

A. From 12 to 25 and sometimes even higher than that.

Q. In para. 6 you have said that not a single case has come to court ? Why is it so ?

A. Because in my part of the country these girls and their parents would not go to courts and the magistrates and the police would not take any steps.

Q. Why will they not go to court ?

A. Because I come from West Bengal where there is a paucity of cases, that is to say, the marriageable age of girls is a little higher in West Bengal and there are no seductions or abductions.

Q. I mean marital cases.

A. It is due to reluctance on the part of the guardians.

Q. Why are they so reluctant ?

A. Because they belong to a society where these reformed ideas have not yet spread.

Q. If the right of complaint be given to certain recognised social reform societies would that work ?

A. My view is that an alien Government has no right to legislate on social matters. It is for the people themselves to form themselves into a society and to see that rules ought to be made.

Q. Are you opposed to social legislation altogether ?

A. I am opposed to any social legislation by an alien Government and more so by a foreign Government.

Q. In para. 17 you say in cases of non-marital relationship the punishment should be more severe. What punishment would you like to give in non-marital cases ?

A. I would make it not less than rigorous imprisonment for 7 years.

Mr. Mitra : You are opposed to any legislation in social matters but in reply to Q. 21 you say that strengthening of the penal law is desirable ?

A. I am for prevention by some method. I would prefer penal laws in the circumstances.

Q. In one or two answers you state that you do not want any State legislation in social matters and you said that you do not want it in any stage ?

A. Considering that we are bound to remain under this alien rule for some time due to a class of our countrymen till they undergo a change I think we must accept this evil of social legislation.

Q. Is not politics a part of social science ?

A. About classes of science I am less competent to form my judgment.

Q. Is it not proper in such functions that the State has to agree to the will of the people in all matters ?

Q. No, there are several provinces to which the administration of the country should not touch, e.g., freedom of conscience.

Q. What is the general marriageable age of girls in Bengal ?

A. In villages the age varies from 10 to 14 while in towns it varies from 12-13 to 16-17. In lower class of people I have found a girl of 2 being married. I have also seen a man of 52 advancing money for a girl of 6 or 7.

Q. What is the general age for attainment of puberty ?

A. Ordinarily it is 14.

Q. Are you for or against marriage laws ?

A. Personally speaking I am against it but I wish that my countrymen should fix the age at 18 for girls and 24 for boys. I would not have any legislation thrust on the people if they are unwilling.

Q. What do you attribute this case for unwillingness ?

A. In one way educated people say it is want of education but I know brilliant graduates of Universities having long tuft of hairs who would observe every old social rule and marry their daughters at the age of 10 or 11. They think that they would be great sinners if they do not marry girls at that age, but I myself do not believe all this.

Mr. Mohd. Yakub : You have said that you do not belong to any social reform movement. What social reform movement you belong to ?

A. Firstly to that movement which would do away with all immoral institutions, secondly, which would do away with all religious institutions and all religions, and thirdly which will do away with all debased ideas about our relations with others' wives. These are the social reform movements to which I belong because orthodox mind which has influenced their own ideas has deformed.

Q. What other method can Government adopt except legislation ?

A. I would not have Government help in this matter at all. I would like this evil to be eradicated by ourselves.

Q. If they are not eradicated by ourselves ?

A. If they are not eradicated by ourselves then the alien Government will be more demoralised to eradicate them.

Q. Will you have any such laws when Swaraj Government is established in India ?

A. There will be no necessity.

Q. Do you mean to say that all crimes will at once cease when Swaraj Government comes ?

A. Certainly. It will be a paradise.

Q. Is Government unsympathetic towards the Hindus alone or towards all the Indian communities ?

A. It is more unsympathetic towards the Hindus.

Q. Why ?

A. Because they are the pioneers in demanding political reforms and democratic institutions. They wanted to have a fair share of the Government. It is from the Hindus that the idea of Swaraj came.

Q. You say that seduction in such cases are due to early marriages among the Hindus ?

A. Not necessarily ; that is one of the reasons.

Q. Is it not a fact that in Eastern Bengal Mussalmans are in a majority ?

A. Yes, they are but I am speaking of the majority of the Hindu population. In fact I cannot but say that majority of the seducers are Mohamedans.

Q. In spite of these facts you do not want legislation as long as Swaraj does not come ?

A. I do not want it because that legislation would not be useful but it would be detrimental to the Hindu interests.

Q. Don't you think that by raising the age of marriage to 16 in the case of girls and to 21 in the case of boys you run the risk of having more immorality among the boys and girls ?

A. Certainly not.

Q. Is marriage not a check upon immorality ?

A. No. I have seen married women living very debased life.

Q. You think that purdah is a safeguard against abduction ?

A. No. I would not introduce purdah and subject them to tuberculosis and such sort of diseases.

Q. What do you mean when you state that in small villages girls are seduced because they do not observe purda ?

A. They are seen by people and they devise some means and get hold of the girl or give something to the old woman who is in charge.

Q. According to your opinion the amendment of 1925 failed because the difference is so slight. If the difference is more appreciable it would be more effective ?

A. Yes.

Q. If you do not want legislation what other means would you devise to raise the marriageable age ?

A. By social reform propaganda and by educating public opinion.

Q. Have you taken any step towards starting any social reform propaganda ?

A. I have not. In fact there has been a charge against me but my answer is that I have devoted my life in politics and politics alone and I cannot take up social reform work because it will be too much.

Q. If you say that a large number of girls die at a very early age can you fight the battle of politics against alien rulers ?

A. I think these political battles have to be fought by words and arguments ; they do not depend on physical progress. I think physical progress will not be so necessary as scientific inventions.

Q. Do not early marriages affect intellectual development of girls and boys ?

A. I am not competent to answer because I have seen fairly intelligent children who have survived early marriages. I do not know if they would have been more intelligent if they had been born later.

Q. You know the proverb of healthy mind in healthy body ?

A. The proverbs are misleading ; proverbs do not always contain wisdom.

Q. You said in answer to Q. 11 that female diseases are so common in Bengali women and they are due to early marriages. What diseases usually do you find among these women ?

A. I do not know the names of those diseases.

Q. Is infant mortality very great ?

A. Yes it is.

Q. Have you read Miss Mayo's Mother India ? Do you think the miseries of Bengali girls pointed out by Miss Mayo are correct ?

A. They are absolutely false, she did not see the real Bengali life.

Q. You yourself admit that such cases are of every day occurrence ?

A. Whatever she has written in her book is false and inspired.

Q. Why do you want more punishment in non-marital cases than in marital relationship ?

A. To prevent seduction before a girl is of mature age to understand what life she should lead in future. Supposing a girl is spoiled at the age of 14 she would not be admitted to decent society and her life would be lost.

Q. What punishment would you suggest in marital cases ?

A. Less severe ; not more than 2 years. In non-marital cases not less than 7 years' rigorous imprisonment.

Mr. Bhargava : Under Sections 299 to 377 I. P. C. there is not a single section in which the right of prosecution is taken away from the general public ?

A. Yes, there is none.

Q. Whereas there are certain sections relating to marriage in which the right is particularly given to the husband or guardian. Do you not regard rape as sin so far as girls of tender years are concerned ?

A. I would say that it is more serious than injury to the person of a woman.

Q. The offences beginning from Sections 299 to 377 belong to the first or second order as given by Bentham that is they are offences against the person injured as well against the society in general ?

A. I am doubtful of the society. Ideas are liable to be changed according to times.

Q. You do realise that offences under Sections 363 and 366 and offences under Sections 372-373 are such as concern the society generally ? I am talking of kidnapping.

A. In my opinion they are, but we have to bring up uneducated people.

Q. Then am I to understand that offences under Sections 363, 366, 371, 372, I. P. C., etc., are of the same nature as offence under Section 375, I. P. C. ?

A. No ; offences under Sections 375 and 376 are of a more heinous nature.

Q. Do they affect the Society more ?

A. I am not in a position to say that they affect the society more ; but they affect the individual.

Q. Then is it (in) your opinion that if the law exists cases against the law should be brought to light in the interests of society and individual.

A. That does not follow.

Q. Supposing public opinion is not in consonance with your wishes but wants such cases to be brought to light, do you think that giving the power of complaint to guardians alone would retard the coming of these cases to light ?

A. I expect guardians of advanced views may go to courts.

Q. Do you think that guardians at present are not of advanced views, because cases are not coming to light ?

A. I do not think they are so advanced.

Q. Do you think it will take another 10 years for such advancement ?

A. That will never happen under an alien Government.

Q. Supposing you attain Swaraj, will it then happen ?

A. That may or may not happen under Swaraj, but I can tell you that it will never happen under an alien Government.

Q. I would like to know whether you are dissatisfied with the present administration of the law as contained in Sections 375 and 376, I. P. C. or would you have them until the millennium of Swaraj is reached ?

A. Swaraj is not millennium: it is only in the fitness of things that we should get it.

Q. Until we have the reins of Government in our own hands, do you not think that it is time that efforts should be made to make any improvements in the existing law ?

A. With the help of an alien Government I would not.

Q. Would you like Sections such as 366 to be in existence ?

A. Personally I would like the whole Penal Code to be repealed.

Q. I understand that you want to restrict the right of bringing complaints in relation to cases under Section 366, 363, 371, I. P. C. etc., to guardians. Is that so ?

A. I would have nothing to do with either the laws or amendments which have been imposed against our will by Lord Macaulay. I would have nothing to do with the Indian Penal Code.

Q. Are you in favour of Sarda's Bill ?

A. I agree with the principles contained in the Bill but it should not be by way of a Bill or law through the legislature.

Q. Did you support Sarda's Bill ?

A. When it was going to the Select Committee, it was only a matter of principle, and I supported it.

Q. At the time when the amendment of Dr. Gour was before the Assembly you opposed it on the ground that it did not go far enough.

A. I objected to it on the ground that no legislation should be undertaken on social matters, but at the same time I pointed out that it did not go far enough.

Q. Did you then vote for raising the age in extra-marital relations ?

A. No ; I remained neutral.

Q. You say that no Government, whether it is an alien Government or Swaraj Government should have any right to interfere with matters relating to social affairs. May I take it that the regulation of the right to marry is not within the province of any legislature ?

A. No ; it is not within the province of any legislature.

Q. Can you quote any authority for it ?

A. There can be no authority for such things. That is my own way of thinking.

Q. Do you think the same about labour legislation ?

A. Yes. It is an encroachment on the liberty of the individual.

Q. What about the child widow marriage in your part of your country ?

A. It is not progressing.

Q. Even when cases of seduction are numerous ?

A. Even then it is not progressing.

Q. Are you personally in favour of child widow-marriage ?

A. Yes ; even in the case of girls of 15.

Mr. Kanhaiya Lal : You are in favour of fixing the age of consent in marital cases at 16. I would like to know whether you can suggest any measures for making the law effective and bringing cases to light ?

A. I think it rests upon the good sense of the guardians. I hope they will realise their responsibility.

Q. Would you like vigilance societies to take up this work in towns and rural areas?

A. It is a novel thing of course and has not been suggested before. But I think they are apt to be more annoying than useful.

Q. Supposing we give the right of investigation and complaint to public workers, would that be helpful?

A. That will depend upon the mode of selection. Personally I would like to have all of them ladies or members of women organisations. They are usually a better class of people than men and they are apt to be impartial, and will not be led away by any petty jealousies of the locality. They will be more fair.

Q. It may be difficult to form women societies in rural areas. In such cases would you have Panchayats?

A. I won't entrust these things to males at all. Even in villages it is possible to have some women. They are certainly a better class of people than men.

Q. It may involve on the ladies who come forward the task of going to court and giving evidence and they might not be willing to take up this kind of work.

A. I do not think those ladies who take up social reform work would object to go to courts or do anything connected with a case.

Q. Do you expect to find many such ladies in rural areas?

A. Such class of ladies may grow if we attempt the experiment in selected areas.

Q. Would you like to authorise social reform organisations?

A. I would not for the simple reason that they are more aggressive in their propaganda, and that is also the reason why so much of their propaganda has failed.

Q. Would you like the Municipal Boards or the District Boards to appoint sub-committees to take up this work and look after these cases?

A. I will do so as soon as Government has nothing to do with these committees. But so long as Government nominates people of its own choice to these bodies, I will have nothing to do with them. That will also depend upon the class of district or municipal boards by whom these people are selected. There are some district boards which are independent and care for nobody. Other boards there are who are fond of presenting addresses to Governors, decorating their offices and so forth. That will depend upon the quality of the district board. So long as the system of nominations remains in the hands of Government, it is useless to give power to the municipalities and district boards.

Q. Am I to understand that you think that power might be given to only such women organisations as may exist to take up this work?

A. Because that was your suggestion I suggested that also. I simply said let the law flourish if it can with the aid of women.

Q. If the case is non-cognisable, who is to enquire and collect the evidence?

A. The prosecutor who figures as the complainant as in the other ordinary cases.

Q. There is a complaint that these cases take considerable time and people are therefore unwilling to take them to court because of the delay and the publicity caused thereby. Is it so?

A. Publicity may be the reason in the case of persons who have a false idea of respectability. But as regards delay, I do not think it is one of the reasons because we find that cases are going on for half a century but yet people are still resorting to these courts.

Q. These are matters of domestic concern: and a suggestion has been made that we might have matrimonial courts in different areas consisting of a magistrate and two non-officials or of purely non-officials to try these cases. Do you approve of this suggestion?

A. I do not think that suggestion is feasible or practicable in the present state of society. We have not advanced so much as to have matrimonial courts in this country. Neither do the morals of our people require the existence of such courts. Our morals are far superior to those of the nations which have got such courts.

Q. In the case of Parsis there is a matrimonial court provided by law to which all matrimonial cases are referred. Cannot we have similar courts?

A. So far as Hindus are concerned, their customs are radically different from the social institutions of the Parsis and our culture, civilisation and social institutions are entirely different too and the analogy does not apply.

Q. Would you recommend the trial of such cases in camera?

A. There is no objection. But I do not see where is the necessity for privacy. Such cases should be openly exposed.

Q. Would you like to make a marital offence compoundable?

A. Yes; I would like to make the case compoundable if the complainant and the girl find that the offender is really penitent and there is no chance of such cases recurring.

Q. The court has got power to allow the case to be compounded.

A. I do not depend upon the court's judicial discretion.

Q. Our object is to reproduce good feeling between husband and wife. In order to attain that object we would like to know whether the cases should be made compoundable with or without the permission of the court?

A. I should think it should be with the permission of the court. It is better that a third party is there to decide.

Q. You say that you are in favour of a free grant of birth certificates. Am I to understand that you are recommending that whenever a report is made to the proper authority, the registering authority should issue a certificate to the reporting individual giving the particulars of the birth registered?

A. Yes; invariably.

Q. Do you think that the present system of registration of births is working satisfactorily in towns?

A. No; not even in towns. I will tell you what the defects are. In the register it is put down child of so and so, male or female. In one case which came to me I was trying to prove the age of a boy and the mother deposed saying that the certificate produced was not that of the boy in question but of a brother of his. Questions of identity like that very often arise.

Q. Can you suggest any measures for making the record more correct and removing these defects?

A. You should make the record contain more details. For instance, the name of the first son might be entered in the case of the second child.

Q. It has been suggested that the parents or guardian of the child should be required to make a supplementary report giving the name of the child, to be entered against the original entry within a requisite period.

A. Supposing they do not give the name to the child till 5 years, I do not think that in such cases we should restrict the liberties of the people to that extent.

Q. You are not then in favour of a supplementary report. How then would you make the birth register more reliable?

A. I am unable to suggest any method.

Q. Supposing we have a marriage legislation or age of consent legislation, would it not be desirable to have a system of registration of marriages giving particulars of the marrying parties with their ages?

A. I do not think it should be introduced. That will be going too far in matters social. But those who want to have the marriages registered, let them do so.

Q. The purpose of maintaining returns of marriages with the ages of the marrying parties, is to prevent or watch breaches of the law.

A. I won't have the State taking up such things. We would like to keep marriage secret.

Q. Would you like the priests to maintain these registers ?

A. They are generally illiterate. They go on reciting Mantras which they have got by heart without knowing what they exactly mean.

Q. Supposing they are bound to maintain these registers, will that help ?

A. I would not recommend it.

Written Statement of Miss JYOTIRMOYI GANGULI, M.A., 6, Gurn Prasad Chaudhri Lane, Calcutta.

1. Yes, there is amongst the educated and the advanced classes, as is evident from the wide-spread agitation in cities, towns and some big villages.

2. Our race has deteriorated physically to a great extent ; nervous disorders and a low percentage of calcium in the blood are common and these make us an easy prey to death. This condition is largely due, I think to very young parentage and so an advance in the present law is entirely justified ; and it is urgently needed to protect girls from being abducted, seduced and then forced to lead a life of shame at an age when they are but mere children, without any idea of what is awaiting them.

3. Cases of seduction and abduction are very frequent as the newspaper reports show, specially such newspapers as the Sanjibani. From these reports, etc., I feel that if the age of consent be raised still higher in the case of extra-marital relations as well as marital (to 18 in the former and 16 in the latter) cases of rape or the improper seduction of girls for immoral purposes will be greatly reduced. The Immoral Traffic Act has, in the city of Calcutta itself, prevented to some extent such seductions of girls and that is proof enough that more effective measures are necessary. And it is to prevent such crimes that the age of consent must be raised.

4. Yes, it has stimulated public opinion amongst the more advanced classes to a considerable degree and thus has been effective in putting off marriage beyond 13 amongst those who call themselves Bhadrals and deem themselves as educated. In the cities and towns, 16 has become the age for those who do not like to call themselves otherwise than orthodox.

5. Usually at 13. Yes, amongst the intelligentsia and the advocates of women's rights it is still higher—14 or 15 ; amongst the very low castes and labourers, at about 13 and amongst the semi-educated at about 12 to 13.

6. Amongst the educated and the advanced section it is not at all common. It may be common amongst the so-called lower classes but it takes place soon after puberty but not before that. If it happens before 13 such cases very seldom come to Court.

7. To me it seems that people are actuated more by custom when they practise early consummation of marriage at puberty than by religious injunction, because many of the Slokas of our Shastras advocate marriage of fully-developed girls and men and almost all of them demand of the bride healthy, well-developed, well-formed, brave and mighty children and not the puny ones the child-mothers give birth to.

8. Amongst the educated it has disappeared and amongst the illiterate it is usually performed after the attainment of puberty and no consummation of marriage is supposed to take place before it—the very meaning of the ceremony being against it.

9. Emphatically no. It usually takes a girl to attain a proper physical development four or five years after the attainment of puberty. Before 18 it is usually injurious to the health of the mother and to that of her progeny to give birth to a child.

10. At 18.

11. Yes, some. In one case the girl had just reached her 13th year. Permanent injury to her lower limbs was the result. The child died and the mother is still lame.

In two or three cases the children did not live long. Sickly and puny as they were the mother could not take proper care she being too exhausted, they died after suffering pain and misery for a few days.

In others the mothers have never recovered their former health. They are but physical wrecks.

12. Oh yes, certainly I do. Nervous, irritable, superstitious, fearful, vacillating and lacking in vital energy our race has come down to the sorry and pitiable state of having a life's span of an average of 23 years.

13. Yes, mainly confined to those who are thinking of their country and race.

14. None of the educated nor the partly educated ones want. Amongst the illiterate from 20 % to 25 % may want. But most of them do not.

15. Yes. If the age of consent be raised the difficulty will be minimised.

16. Yes ; if it be raised above fourteen it will be considerably minimised.

17 and 18. Yes. In the case of marital ones the husband stands responsible for the child but in the case of extra-marital offences the girl has to bear the brunt of all the evils—obloquy, degradation and the hardship of rearing up the child alone.

The punishment as it is now in both cases may stand.

19. Yes. The Bonomali Roy case and cases in Kalna, Midnapore and Burdwan are proofs enough to show that safeguards beyond those existing are urgently needed. Being not conversant about legal technicalities I cannot suggest measures.

20. I would prefer fixing the minimum age of marriage but my part of the country will prefer penal legislation fixing a higher age of consent for marital cases. I am afraid ; because amongst the orthodox and those who go by custom and Shastric injunctions, there is a tendency to marry a girl off before attainment of puberty. They desire to acquire 'Punyas' or merits by Gouridan, Kanyadan, etc.

21. Strengthening of the penal law is required to stop the abduction and seduction of girls, i.e. for extra-marital cases, but for marital cases, the object will be gained by progress of social reform by means of education and social propaganda no doubt.

Oral Evidence of Miss JYOTIRMOYI GANGULI, M.A., 6, Gurur Prasad Chaudhri Lane, Calcutta.

(Calcutta, 18th December 1928.)

Chairman : Are you connected with any educational institution ?

A. Yes.

Q. What is that institution ?

A. The Vidya Sagar Bani Bhavan Widow's Home of which Lady Bose is the Secretary.

Q. How long have you been connected with that institution ?

A. For the last three or four years. Before that I was Principal of the Brahmo Girl's School. And before that I was Principal of the Kanya Maha Vidyalaya, Jullunder.

Q. Are you connected with any social reform movement ?

A. I am a Brahmo ; I am also a member of the Social Reform League.

Q. What is the function of the educational institution with which you are connected ?

A. It is a Widows' Home. We give widows there literary as well as industrial education.

Q. How long has this institution been in existence ?

A. Six years.

Q. How many widows are there in that institution ?

A. 32.

Q. Do they belong to orthodox families ?

A. All of them belong to orthodox families.

Q. Do you think that the Age of Consent Law has been known amongst people who have post-puberty marriages and consummation soon after puberty ?

A. I do not think it is known because most of our people are not literate.

Q. I am speaking about the classes amongst whom pre-puberty marriages and consummation soon after puberty take place. Do you think that the law of the age of consent is known amongst such people ?

A. So far as I know I do not think it is known.

Q. Have you reason to believe that this statutory law fixing the age at 13 is broken, i.e., does consummation take place amongst any community before 13.

A. I think it takes place sometimes amongst the lower classes.

Q. What is the average age of puberty amongst the girls here ?

A. 13.

Q. In cases where it takes place at 12 or 13, consummation may take place before 13. Do you think there are a large number of such cases ?

A. It is not a large number.

Q. Have you known any cases coming to light ?

A. Yes.

Q. When was that ?

A. About ten years ago. A girl was married at 8 and she became a mother when she was 12.

Q. Did that come to court ?

A. It was not brought to court because such cases are not generally brought to court if that happens to be amongst the Bhadralog classes.

Q. Did you know about it although it did not come to court ?

A. Yes.

Q. There may be cases in which consummation might have taken place before 13, but a child might not have been born. Have you heard of any such cases occurring ?

A. No.

Q. What is this Bonomali Roy case which you refer to in para 19 ?

A. Bonomali Roy was the father of the girl and he acted in collusion with the man who took the girl away. Bonomali Roy escaped punishment.

Q. Was it a case of seduction or was it a marital case ?

A. It was a case of abduction and seduction ; but the girl was taken away with the consent of the father.

Q. What are the other cases you refer to as having happened at Kalna, Midnapore and Burdwan ?

A. I have read about them in the newspapers. In all these cases the girls were below 18.

Q. What was the age of the girl in the Bonomali Roy case ?

A. 16 or 17.

Q. Did these cases happen within the last 10 years ?

A. They happened very recently. Some of them happened last year and some the year before last.

Q. In all these cases was there the consent of the girl ?

A. No.

Q. What do you mean by saying that safeguards beyond those existing at present are needed ?

A. I mean raising the age to 18.

Q. Do you think that a girl at 18 would be able to discriminate ?

A. Yes ; I think she may be able to do so. I think in such cases severe punishment should also be given.

Q. You say that you would prefer a higher age of consent. What age do you suggest ?

A. 16.

Q. What do you think public opinion will prefer ?

A. Our people would look to the Government legislating about these things because they do not like to express their opinion against the opinion of the Sastras. That is why they would look to the Government to fix a minimum age for marriage.

Q. You say that our deterioration is largely due to young parentage and so an advance in the present law is entirely justified. What is your authority for saying that this is largely due to young parentage ? Do you base it on your personal experience ?

A. I base it on my personal experience as also the statistics collected by the authorities in the schools. All these show that the deterioration in the physical condition is due to early parentage.

Q. Do you not think there may be a variety of causes, namely, malnutrition, malaria and other things. Why then do you say that this is largely due to early maternity ?

A. When a young girl becomes a mother she has not got the proper development, and she cannot give the child the proper amount of calcium which the child needs.

Q. Have you known of girls who were well developed at 13 or 14, and whose marriage was consummated at about that age ? Have you known of such girls becoming mothers soon after consummation, and have you known of such girls suffering ?

A. I know of two or three cases like that in which the girls suffered.

Q. Were the girls physically well-developed ?

A. Yes.

Q. Were they about 13 or 14 ?

A. Two of them were 13 and one was 14.

Q. Did they all become mothers before 15 ?

A. Yes.

Q. How did they suffer ?

A. My mother was the doctor who attended in these cases and she told me that it was very difficult for her to manage the delivery.

Dr. Beadon : In para. 2 you refer to low percentage of calcium in girls. Has any research been done in this direction ?

A. Yes ; they are being done even at the present moment.

Q. Is it found that young women have low percentage of calcium ?

A. Yes.

Q. Who is making the research ?

A. There are some doctors who are making the research. Three of them are Dr. Charu Chandra Roy, Dr. N. C. Bhattacharji and Dr. Ananda Kumar Sen.

Q. In para. 11 you say that in one case the girl was 13, and she had permanent injury to her lower limbs. Was this a recent case?

A. Yes; I have heard about these from my mother.

Q. What was the age of the girl?

A. She is now about 24. That happened about 10 years ago.

Q. You say that in two or three cases the children did not live long. When did these cases happen?

A. They are all recent cases, one of them happened in the last year.

Q. Would you say that these cases are exceptional or are they common?

A. They are general.

Q. What about the children in these cases who have survived?

A. They are sickly.

Q. Do they recoup health later?

A. No; they are always weak.

Mrs. Nehru: Were you present at the meeting at Albert Hall where women passed a resolution for the raising of the age?

A. Yes.

Q. Were there orthodox women at the meeting?

A. The meeting was a purdah one altogether and many orthodox ladies attended.

Q. Did you pass resolutions both on Sarda's Bill and Dr. Gour's Bill?

A. Yes; we passed resolution on both the bills.

Q. What were the ages that were fixed?

A. I think it was 14 for marriage, and 16 for the age of consent. I am not quite sure what it exactly was.

Q. You say that there is dissatisfaction in big villages. Have meetings been held in those villages on the subject?

A. Yes.

Q. Can you give us the names of some villages where these meetings were held?

A. Radhanagar in Pabna, Hassara in Dacca and Himatpura in Pabna.

Q. Were these meetings mixed including men as well as women?

A. Separate meetings in some places, and in some places meetings both of men and women.

Q. How many ladies were present generally in these meetings?

A. In the Albert Hall meeting there were 400 to 500 ladies.

Q. In cases in which meetings were held in the villages, were both the bills supported?

A. Yes. Most of these village ladies are for raising the age of consent.

Q. Did anybody from here go to organise these meetings?

A. There are Ladies' Mahila Samities and they organise these meetings.

Q. Have you any idea about the marriageable age in these villages.

A. In East Bengal, especially in Dacca, the marriageable age is 16.

Q. What is the lowest age there?

A. Amongst the Namiasudras and others it is about 9 and 10.

Q. Have you any personal knowledge of the cases of abduction and seduction you mention or is your knowledge only confined to the newspapers?

A. Some cases I have personal knowledge as in the case of the Bonomaly Roy case. I have seen the girl.

Q. Can you tell who the complainant was in that case ?

A. The Nai Raksha Samiti. The girl came to the Samiti and the Samiti brought the case to court.

Q. What was the result of the case ?

A. The father of the girl escaped punishment. The man who seduced the girl was punished. The girl was then married to some body else.

Q. What was the punishment given to the man ?

A. I do not remember.

Q. Can you give us details about this Immoral Traffic Act which you refer to in para. 3 ?

A. I do not know much about it.

Q. Do you think that the number of those orthodox people who think that marriages should be pre-puberty is very great in Bengal ?

A. I think the number of orthodox people and the liberal-minded people is almost about the same.

Q. You have given us several ages of puberty. Can you tell us why the ages differ so much ?

A. Amongst the educated classes the girls stay in schools and they are occupied in other ways and they do not think about these things. It is the difference in the surroundings which makes the difference.

Q. Would you like the punishment in marital cases to be lighter than it is at present ?

A. I cannot say anything about the punishment.

Mr. Mitra : In para. 7 you refer to some Slokas which you say advocate marriage of fully developed girls and men and almost all of them demand of the bride healthy, well-developed, well-formed, brave and mighty children. Can you give us the texts ?

A. I do not know the texts ; but I know there are Slokas to that effect.

Q. Can you give us the reference ?

A. I shall send you the reference later on.

Q. Do you think that marriageable age of girls amongst the educated classes is going higher and it is now usually 14 ?

A. Yes.

Q. In fact may I take it that there will be no opposition from them if the age of marriage is fixed at 14 ?

A. No.

Q. Do you not think then that if there is legislation these people will be glad because they need not then be afraid of the orthodox people ?

A. I know that at least the women will be glad.

Q. Do you not also think that these orthodox people do not really rely on the Sastras but on custom ?

A. Yes.

Q. And they do not marry their girls at 8 or 10 as prescribed in the Sastras ?

A. Mostly their girls are married at the 12th year.

Q. Can you tell us what the percentage of the lower class who practise early marriages will be here ?

A. I think it will be about 5 per cent.

Q. What is the marriageable age amongst the larger class of population here ?

A. Marriages amongst them take place up to 12.

Q. If it is possible to have a law fixing a minimum age for marriage, what age would you recommend ?

A. I think 14 will be supported.

Q. Do you think that if the age is fixed at 14 there will not be much objection ?

A. No.

Q. In para. 20 you say that people would prefer a law of consent to a marriage law. Is it because there is nothing in the Sastras about consummation ?

A. Yes.

Q. Is there no Garbadhan ceremony here ?

A. No ; not amongst the educated classes ; but other classes have that ceremony.

*Q. Does consummation take place amongst the orthodox classes within the 16 days of the first menses ?

A. I do not know that.

Mr. Shah Nawaz : Besides the Brahmins, what other castes follow pre-puberty marriages ?

A. I do not know much about these castes, but I think the Namasudras, the Gowalas and others have pre-puberty marriages.

Q. What would be the percentage of these classes ?

A. It would be a very big percentage.

Q. You say you have 32 widows in your institution. Can you tell us how many of them became widows before 13 or puberty ?

A. About 6 of them.

Q. How many of these 32 are Brahmins who follow pre-puberty marriages ?

A. There are 7 Brahmins and one Namasudra.

Q. Are these girls content with their lot ?

A. Yes ; in the widows' Home they are. They do not think about remarriage. In the institution they are quite happy. Of course one or two might think of it, but they do not say that they would like to get remarried.

Q. Have you come into contact with women in the villages ?

A. I have gone about the villages.

Q. Are you quite sure that they are in favour of Sarda's Bill ?

A. I have found that they are for raising the age of consent as well as for fixing the age of marriage.

Q. What age will they want for marriage ?

A. Mostly they want it about 14.

Q. Do women desire to have a voice in the selection of their husbands ?

A. It is so amongst the women of the educated classes.

Q. But what about the women in the countryside ?

A. They would like to have a voice, but they dare not express their opinion.

Q. Would they like to become independent ?

A. Yes ; they would.

Q. Is your society doing something for the welfare of women ?

A. Yes. Yes, it is one of our creeds.

Mr. Kadri : We have been told that frequent child births contribute to maternal and infantile mortality. Have you been told about the evil effects of frequent child-bearing ?

A. Yes ; both contribute to mortality.

Q. In these intra-marital cases it is difficult to bring cases to light. Would your Reform Association help in bringing these cases to light ? Would you as a member of the Association do it ?

A. I cannot say that.

Q. Would it be possible to form vigilance societies in important centres in Bengal to watch these cases and help in bringing them to light ?

A. Yes.

Q. Do you think that in the mufassal women will be available for these vigilance societies ?

A. In some places they will be available.

Q. A suggestion has been made that we might create special courts like matrimonial courts for the trial of these offences in which a judge may be assisted by one or two lady jurors or assessors. What is your opinion ?

A. I think that is a good idea.

Q. Would it be possible to get women jurors or judges ?

A. Yes.

Chairman : You have had long connection with schools for girls. Do you think that there is any danger of girls going wrong if they attain puberty before 14 and they are not married for about two years after puberty ?

A. No ; not at all.

Q. We have been positively told that there is some danger. What do women think about it ?

A. I know thousands of girls who have kept straight.

Q. Are they girls belonging to any particular class ?

A. No ; they are girls belonging to all classes.

Q. What are their ages ?

A. All above 14.

Q. What would be the highest age ?

A. 24 to 25.

Q. May I take it that your experience extends from here to Jullunder in the Punjab ?

A. My experience is about the two provinces of Bengal and the Punjab.

Written statement of Mr. Charu Chandra Mitra, Attorney-at-law, 5, Hastings Street, Calcutta.

1. There is no dissatisfaction amongst the people except perhaps among a microscopical section of Brahmos and England-returned people who want to pose as reformers.

2. No case has been made out showing the necessity of the change of the law as it stands at present. Not a scrap of evidence has been produced to show that the present law affects injuriously any section of the Society. The raising of the Age of Consent inside the marital state would seriously interfere with the ceremony of Garbhadan which should be performed on the girl's attainment of puberty. I have shown in my pamphlet * copy of which I enclose herewith. (See pages 5 to 21) that the reasoning upon which some reformers want to raise the Age of Consent is fallacious, that there is ample evidence to show that consummation of marriage after puberty does not injure either the health of the mother or the child in any way. I enclose herewith extracts from Havelock Ellis' book on the Psychology of Sex which shows that eminent medical men who have dispassionately studied the question have come to the same conclusion as I have done. It is also a matter of common experience with us that neither the mother nor child are injuriously affected. I may mention that my eldest daughter gave birth to her first child on the day before she completed her 13th year and in course of 13 years she became the mother of 10 children and she is now in her 39th year the mother of 15 children

of whom 11 are now living (one died of drowning, two of typhoid and one of dysentery). Her health has not been affected in any way. Her first child who was very strong and healthy died of drowning and 2nd, 3rd, 4th and 5th children are all living and very strong and healthy in comparison with the average health of Bengali children. I may mention that Babu Mohini Mohon Chatterjee, M.A., Attorney-at-law, formerly President of the Incorporated Law Society of Calcutta is the first issue of his mother who was 13 at his birth. Babu Mohini Mohan is now over 70 years of age. His hairs are still black, not a tooth has fallen off and he is quite hale and hearty. Almost every one of us can give on enquiry numerous examples of strong and healthy children of the so-called immature mothers.

The raising of the Age of Consent among married couples would be vexatious and useless piece of legislation which would be availed of only to gratify malice or enmity. The punishment of the husband would injure the girl more than any coitus can do and would cause whenever the law is invoked needless disaffection among the people in the locality as a most wanton interference with their lives. Besides the difficulty of ascertaining the true age where the generality of the people do not know their own ages nor the ages of their children and where birth registers are not kept properly at all anywhere, much less, in every village is itself a serious difficulty in the application of the law. No two doctors will perhaps agree as to the exact age. They have no scientific data to fix the exact age of the boys and girls. In every case of prosecution the girls will have to be medically examined by doctors-qualified lady doctors are not available everywhere. The harassment and indignity and expense to which parties may be needlessly exposed to at the instance of malicious people is itself a sufficient reason not to interfere with the law.

Any advance on the present law would cause widespread discontent amongst the labouring classes who will be primarily affected by this law and create disaffection against the Government who alone would be held responsible for the age and the harassment and expenses to which the parties would be put in every case in which the law would be tried to be enforced are in themselves sufficient reason not to interfere with the law as it stands within marriage. The law should not therefore be altered.

3. Not in Calcutta. I do not think that the raising of the Age of Consent has created any difference. I do not think that any law would be of any material help. Education of public opinion, greater vigilance and public spirit on the part of the people and a more efficient police are the only effective remedy.

4. No.

No.

No. The age of marriage has been rising on the economical grounds. There is no necessity as I have tried to show to make it effective.

Putting off marriage beyond 12 for girls would be contrary to the injunctions of the Hindu Smriti Shastras and to custom and religious usages. Besides it will hasten the disruption of the joint family system. That would cause tremendous suffering among the poor. I have indicated in pages 26 to 32 of my pamphlet that India would be called to face the problem of poverty in all its hideous nakedness. Her resources are hopelessly inadequate to meet the situation by any other known ways of the mitigating poverty.

5. The usual age is between 11 to 13, mostly at 12. I am not aware that it varies among different castes or communities.

6. My belief is that cohabitation is common puberty among married couples. I do not know of any case that has come to court. I have reason to believe that when the girls are not married for sometime after puberty some of the girls go astray. I have heard of 3 cases from the parents. It would appear from Judge Ben Lindsay of Denver's (in U. S. A.) recent book 'The revolt of youth' that about 10 per cent. of the girls between 14 and 17 misbehave themselves in the United States of America. The criminal cases in other countries also show that cases of this sort are not unknown in European countries and it is to prevent the tremendously injurious con-

sequences of such cohabitation by girls and other unnatural means of satisfying the sexual appetite which some portion of the girls all the world over do practise that the custom of early marriage has been in vogue here. If some portion of the girls at 14 go wrong in the United States, we should expect the same here in girls of 12 and 13.

7. Probably that is so after puberty; there is an authority quoted from Rig Veda and most of the Smriti Shastras. A pamphlet was written by the late Pundit Sasadhar Tarka Churamoni at the time of the raising of the Age of Consent in the time of the viceroyalty of Lord Lansdowne which I have read but have not kept any notes in which he quotes all the authorities in support; the committee will be able to find it from the papers and documents relating to the Act from the Home Office.

8. Garbhadan ceremony is performed generally though it has been falling into disuse amongst the educated middle class people. It is performed after the first menstruation on, I believe, the fourth night. This is just before the consummation of marriage.

9. Yes. That is the nature's indication and there is no evidence whatever to the contrary. (See my pamphlet.)

10. On the attainment of puberty with the husband.

Outside matrimony a few years (say 2 or 3) of restraint is desirable but, I fear, there are practical difficulties.

11. No.

12. Decidedly not. (See my pamphlet.)

13. The passing of the law has nothing whatever to do with the development of any opinion on the subject. The economic condition of the middle class coupled with the disruption of the ties of joint family among them and the adoption of a higher standard of living by them without a corresponding increase of the income, nay with a decrease of income, has been raising the age of marriage amongst the middle classes and is likely to raise age of marriage considerably more within a short time. It might have a small influence over the other classes specially in very infantile marriages say at 5 or 6.

14. They are for the Garbhadan ceremony. I do not know that they have feelings either way as regards consummation but are decidedly in favour of early marriage.

15. Yes. There should be birth registers in every village which should be open to inspection practically free of charge. But that I fear means some millions of Rupees every year.

16. No.

17. Certainly. Marital offences should not be punished at all except in cases of great cruelty. Even then the punishment should not be more than six months' imprisonment for the girl herself suffers along with her husband. Outside marriage the punishment should be severe. It may extend to 5 years of imprisonment where there is any cruelty or brutality. But where there is no such cruelty and the girl was actively consenting party the punishment should not exceed 3 years.

18. These trials should take place in Camera. The name of the girl and her parents should not be allowed to be published. But the name of the accused and the punishment inflicted should be published. Wherever any medical examination is necessary that should be done only by a qualified female doctor.

19. No prosecution should be entertained except at the instance of or on behalf of the girl.

20. No doubt fixing a higher age of marriage would be more effective but that would be wanton tyranny without any justification whatever and will bring untold miseries upon the girls themselves. Grown up girls of poor people specially orphans would be seduced in very large numbers and their miseries would be very much greater than that of the girl-widow and the framers of the law would

be responsible for their life of miseries, shame and destitution. It would be deliberate violation of the solemn pledge of the Queen.

The other alternative would be useless—only serve the purpose of filling the pockets of the police and the pleaders and foment malicious litigation.

21. Certainly the latter, I should think that a propaganda in favour of early marriage should be carried on in the interest of the girls themselves not only here but in Europe and America. The evils of deferring of marriage and its attendant evils due to long sexual abstinence, such as diseases of menstruation, neurasthenia, hysteria and other nervous diseases, sexual perversions, inversions, unnatural means of satisfying sexual desires, spread of venereal diseases, unhappy marriages, animosity between the sexes, have become so great in Europe that the evils of child marriage, if it be an evil at all, are negligible in comparison.

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"Of more importance is early pregnancy. Several investigators have devoted their attention to this question. Thus Spitta (in a Marburg mangural dissertation) reviewed the clinical History of 260 labours in primipara of 18 and under as observed in Marburg Maternity. He found that the average health during pregnancy was not below the average of pregnant women while the mortality of the child at birth and during the following weeks and the mortality of the mother was by no means high. Picard (in a Paris thesis in 1903) has studied child birth in 38 mothers below the age of 16. He found that although the pelvis is certainly not yet fully developed in very young girls, the joints and bones are much more yielding than in the adult, so that parturition far from being more difficult is usually rapid and easy. The process of labour itself, is essentially normal in these cases and even when abnormalities occur, it is remarkable that the patients do not suffer in the way common among older women. The average weight of the child was 3 Kilogrammes or about 6 lb. 9 ounces. * * * * * The recovery of the mother was in every case absolutely normal and the fact that these young mothers become pregnant again more readily than primipara of more mature age, further contributes to show that child birth below the age of 16 is in no way injurious to the mother. Gache (Annales De Gynecologic et d'obstetrique, Dec. 1904) has attended 91 cases of labours of mothers under 17 in the Rawson Hospital, Buenos Ayres; * * * * * Gache found that those young mothers not more exposed than others to abortion or to other complications of pregnancy, * * * * *

The average weight of the child was 3,039 grammes or 6½ lbs. It may be noted that most observers find that very early pregnancies occur in women who begin to menstruate at an unusually early age, i.e., some years before the early pregnancy occurs."

"It is clear that young mothers do remarkably well while there is no doubt whatever that they bear unusually fine infants. Klienwa'chter indeed, found that the younger the mother the bigger the child. It is not only physically that the child is superior to those of older mothers, both in conduct and intelligence, provided the fathers are not too old or too young. The detailed record of individual cases confers these results both as regards mother and child. Thus Milner (Lancet, June 7, 1902) records a case of pregnancy of a girl of 14. The labour pains were very mild and delivery was easy. E. B. Wales of New Jersey has recorded the history reproduced in Medical Reprints, Sept. 15, 1890) of a coloured girl who became pregnant at the age of 11. She was medium size, rather tall and slender but well-developed and began to menstruate at 10. She was in good health and spirits during pregnancy and able to work. Delivery was easy and natural and not notably prolonged and apparently not unduly painful for there were no moan or agitation. The child was a fine healthy boy weighing not less than eleven pounds.

Mother and child both did well and there was a great flow of milk. Whiteside Robertson (British Medical Journal, January 18, 1902) has recorded a case of pregnancy at the age of 13 of a colonial girl of British origin at Cape Colony which is notable from other points of view. During pregnancy she was anæmic and appeared to be of poor development and doubtful normal pelvic conformation. Yet delivery took place naturally at full term without difficulty or injury and the lying in period was in every way satisfactory. The baby was well proportioned and weighed 7½ lbs. I have rarely seen primipara enjoy easier labour and I have never seen one look forward to the happy realisation of mother-hood with greater satisfaction.

"The facts brought forward by obstetricians concerning the good results of early pregnancy as regards both mother and child have not yet received the attention they deserve. They are however confirmed by many general tendencies which are now fairly well recognized. The significant fact is known, for instance that in mothers over 30 the proportions of abortions and miscarriages is twice as great as in mothers between the ages of 15 and 20, who are also superior in this respect to mothers between the ages of 20 and 30."

* * * * *

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"The facility of parturition at an early age corresponds to an equal facility in a fact that is overlooked. In Russia, where the marriage still takes place early it was formerly common when the woman was only 12 or 13 and Cutteit (Dressing Jahre Praxis, Vol. I, page 324) that he was assured by women who married at this age that the first coitus presented no especial difficulties.

There is undoubtedly at the present time a considerable amount of prejudice against early mother-hood. In part, this is due to a failure to realise that women are sexually much more precocious than men physically as well as psychically the different is about 5 years. * * * * *

It has more recently been affirmed by the discovery that while the male is never capable of generation before 13 the female may in occasional instance become pregnant at 8 (some of the recorded cases are quoted by Kisch (in sexual life of woman). In part, also, there is an objection to the assumption of responsibilities so serious as that of mother-hood by a young girl and there is a very reasonable feeling that the obligations of a permanent marriage tie ought not to be undertaken at an early marriage." (My note:—These objections do not apply to those who live in joint families and the parents undertake the burden of rearing and maintaining the mother and children and select proper partners.)

"On the other hand apart from the physical advantages as regards both mother and infant, on the side of early pregnancies it is an advantage for the child to have a young mother who can devote herself sympathetically and unreserved by its interests instead of presenting the pathetic spectacle. We so often witness in the middle aged women who turns to mother-hood when youth and mental flexibility are gone and her habits and tastes have settled into other grooves."

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(THE ART OF LOVE.) (PAGES NO. 528-529.)

Referring to (Raising the Age of Consent).

"Such enactments in Gladstone's time in England as these, however, it must be recognized, arbitrary, artificial, and unnatural. They do not rest on a sound biological basis, and cannot be enforced by the common sense of the community. There is no proper analogy between the age of legal majority which is fixed, approximately, with reference to the ability to comprehend abstract matters of intelligence, and the age of sexual maturity which occurs much earlier, both physically, and is determined in women by a very precise biological event; the completion of puberty in the onset of menstruation. Among peoples living under natural conditions in all parts of the world it is recognized that a girl becomes sexually a

woman at puberty ; at that epoch she receives her initiation into adult life and becomes a wife and a mother. To declare that the act of intercourse with a woman who, by the natural instinct of mankind generally, is regarded as old enough for all the duties of womanhood is a criminal act of rape, punishable by imprisonment for life (as it was proposed to be done) can only be considered an abuse of language ; and what is worse, an abuse of law, even if we leave all psychological and moral considerations out of the question, for it deprives the conception of rape of all that renders it naturally and properly revolting.

“ The sound view in this question is clearly the view that it is the girl's puberty which constitutes the criterion of the man's criminality in sexually approaching her. In the temperate regions of Europe and North America the average age of the appearance of menstruation, the critical moment in the establishment of complete puberty, is 15 (see e.g., Havelock Ellis, *Man and Woman*, Ch. XI, the facts are set forth at length in Kisch's *Sexual Life of Woman*, 1909). ”

In those lands where the average of puberty is higher or lower, the Age of Consent should be raised or lowered accordingly.

Oral evidence of Mr. Charu Chandra Mitra, Attorney-at-law, Calcutta.

(Calcutta, 18th December 1928.)

Chairman : For how many years have you been Attorney-at-law ?

A. It is now going to be 32 years.

Q. In 1891 there was a change in the law ?

A. Yes.

Q. I believe you had similar objections then ?

A. I had.

Q. In 1925 also ?

A. Yes.

Q. Do you think that the law of ‘ the age of consent ’ standing at 13 is in any way objectionable ?

A. Yes.

Q. It is objectionable on the general ground that legislation in matters like this is undesirable ?

A. Not only that. It is a violation of the Queen's pledge, and further there is a very great reason behind the injunctions of our Shastras.

Q. What is that ?

A. One of the objects of marriage at an early age is to provide shelter and protection to the girls in case of any misfortune befalling the family of the girl's father and further I find from Havelock Ellis's book that at the time of menopause and at the beginning of menstruation the desire for intercourse is very great and unless it is satisfied in a natural way many of the girls would be addicted to abnormal ways of satisfying it.

Q. It comes under going wrong.

A. Not simply that. I am referring to unnatural ways of satisfying the sexual cravings which is far more injurious than any sexual intercourse at an early age immediately on the attainment of puberty.

Q. What percentage do you think go wrong ? Do all girls go wrong ?

A. I can't tell you that. From Judge Lindsay's book it appears that more than 20% of the girls go wrong.

Q. Of what ages ?

A. After puberty, within one or two years. If they have a natural way of satisfying the desire at that time they would not take to abnormal ways and to sexual intercourse without marriage.

Q. I thought it would be covered by saying that there is a danger of going wrong. Danger of going wrong would include any unnatural way of satisfying the desires.

A. But ordinarily people would be taking 'going wrong' to mean 'to have sexual intercourse with other than the husband.'

Q. However, this you believe is at the bottom of the religious injunction.

A. I do believe. The dangers of abstinence also, according to the psychoanalysts are very great.

Q. For any length of time ?

A. There is no fixed period. Whenever the sexual desire has got dominance there is a danger in abstinence after that.

Q. Could you give us an idea of the percentage of people in Bengal who observe pre-puberty marriage and those who observe post-puberty marriage ?

A. My impression from reading the statistics of the Census Report is that the percentage of those who marry pre-puberty is more than 60%. I think L. Lajpat Rai has given figures in his book 'Unhappy India.'

Q. So that about 40% observe post-puberty marriage ?

A. Yes. Of course there are always some who are left unmarried.

Q. According to you puberty takes place at 11 ?

A. Between 11 and 12 mostly. But sometimes it is delayed also on account of some reasons.

Q. You think intercourse must follow immediately on the attainment of puberty ?

A. It should or may follow. Dr. Norman Haire in his book on Hymen is also of the same opinion that mating should immediately follow the attainment of puberty.

Q. I understand that the substance of your statement is as follows. Puberty is Nature's indication that the girl is fit for sexual intercourse. Is it so ?

A. Yes.

Q. And consummation soon after if not resorted to will cause the girl to go wrong ?

A. Yes. Some of them.

Q. And such consummation has in no case resulted in evil consequences to the mother and the child and the opinion of medical writers is for early maternity.

A. No evil result follows : But you have missed the principal point.

Q. What is that ?

A. When you are introducing a compulsory legislative measure you are interfering with my liberty and so long as you do not prove conclusively that without such legislation injurious consequences result to the community you have no right to impose your own will upon mine. The purpose of my pamphlets which I have submitted to you is to show that you have no basis whatever for assuming that early maternity or early consummation immediately after puberty in any way injures the mother or the child.

Q. Do you mean that compulsory legislation is not justifiable till early consummation and early maternity are proved to be injurious to the race ?

A. Yes and I say there is absolutely no evidence whatever which science or logic would admit as proof that it is injurious. This unjustified assumption underlies these bills. Further such legislation would cause much greater injury than can possibly be attributed to early marriage. The remedy is worse than the disease. This legislation will also interfere with the whole social fabric of the Hindu society such as the joint family system and caste system.

Q. When does consummation take place among these pre-puberty people ?

A. It generally takes place after puberty.

Q. Is there any period that is allowed to elapse between puberty and consummation ?

A. I should think in this part of the country, consummation immediately follows.

Q. That is to say, wherever pre-puberty marriage takes place consummation takes place within 16 days of puberty. Can that be said ?

A. I think so.

Q. Are you prepared to state from your experience or from any authority that in the case of these 40% who observe post-puberty marriage and consummation sometime after puberty girls have gone wrong ?

A. Among my friends and relatives I know of three cases of pregnancy before marriage.

Q. What class of people were they ?

A. Very respectable people.

Q. Have you seen any others beyond your friends and relatives ?

A. I have heard others, but I can't vouch for the accuracy of the information. Scandal mongers there always are.

Q. What was the age of these girls ?

A. About 13.

Q. Have you heard of pre-puberty marriages having taken place and married girls having gone wrong ?

A. Yes.

Q. How many cases have you seen or heard within the period that you have heard these three cases ?

A. At about that age, none. I have not heard of any such girls going wrong before 15.

Q. Have you heard of married girls going wrong after 15 ?

A. Yes.

Q. How many cases have you heard ?

A. With regard to these cases my information will merely be hearsay. I have heard people say that in such and such family a girl has gone wrong.

Q. How many such cases have you heard ?

A. It may be 5 or 10.

Q. Have you heard of cases of girl-widows below 15 ?

A. No.

Q. With regard to those widows are you prepared to say that in most cases they go wrong ?

A. No. That would be a calumny.

Q. What is the percentage of widows going wrong ? Have you heard of any case during the last 10 years ?

A. It would be very difficult to give percentage.

Q. Can you say how many cases have you heard or known ?

A. There would be several widows, of all ages. I have not come across a single case of a girl-widow below 15 going wrong.

Q. If that is so, why is your apprehension different about girl-widows and about girls left unmarried till 14, say ?

A. Because there is a difference in the training.

Q. In a Hindu Home how do you differentiate between a girl of 14 and a child-widow of 14 ?

A. The training that is given to unmarried girls and to widows is very different. In the case of a widow the diet is different. They are not allowed to take any

flesh, meat or even fish and also they are not allowed to mix in amusements. They are kept under some restraint.

Q. What do you mean by amusements? Do you mean that on festive occasions they are not allowed to take part?

A. They are not allowed to take part on the occasion of marriage and they are not allowed to mix so freely and enjoy the company of other people as the maidens are allowed to do.

Q. The maidens are allowed more liberty than the child-widows?

A. Certainly.

Q. Is there any other difference?

A. The other thing is that they are given Mantras and Pujas so that the sexual propensities may be sublimated as it were.

Q. Do you yourself believe that they are given mantras and pujas to keep down their desires?

A. I do, and that makes a world of difference.

Q. May I ask if these pujas and mantras are given in all houses even when a girl is 15 years, say?

A. Yes.

Q. As soon as she becomes a widow she is given that puja?

A. Not as soon as she becomes a widow.

Q. Soon after puberty?

A. Yes.

Q. Are the married girls also given those mantras?

A. But the age at which these married girls are given the mantras is generally very much later than the age at which widows are given. Widows are given at a very much earlier age.

Q. At what age are the widows given?

A. There is no fixed age. When they become widows, shortly after that they are given mantras, etc., for the purpose of weaning their minds from worldly affairs and make them less pleasure seeking.

Q. And yet you say you have heard of several widows going wrong after 15?

A. Yes, I have. But I have heard none below 15.

Q. Supposing there is medical opinion or any data showing that maternity earlier than 16 is injurious to the child and the mother, would you modify your opinion or would you still go by the shastric injunctions?

A. So far as I am concerned I would not care a bit for medical opinions as such. I have seen several cases where the medical opinion was unanimous but which has subsequently been repudiated by the medical authorities themselves. The medical profession is not even unanimous in holding that early marriage or consummation after puberty is in any way injurious. (See Havelock Ellis.)

Q. I understand you are relying on medical authorities with regard to this question.

A. No. I am relying on facts and want you to do that.

Q. Have you not quoted medical opinion in support of your proposition?

A. I am quoting medical evidence which is based upon facts.

Q. If from evidence based on data a conclusion can be drawn that early consummation is an evil both to the mother and the child would you modify your opinion?

A. As yet I have not seen any such data and I shall be glad if you can give me any data.

(Figures given by Dr. Adisesham were given to witness who was going through it when the President told him that a copy of it would be sent to him and he may send his note on criticism on it afterwards.)

Q. You do not care for medical opinions at all ?

A. I care for facts and not opinions. Opinions are never admitted as proof in science.

Q. If there is evidence based on data which shows that maternity before 16 is injurious to the mother and the child will you be prepared to modify your opinion?

A. Yes.

Q. In that case you would not consider your other objections as valid ?

A. I will give preponderance to this. Physiological objections should outweigh all other objections.

Q. In that case you think legislation will also be justifiable ?

A. Not 'will be.' It 'may be.' You have also to consider other circumstances.

Q. What are those ?

A. You have got to see whether the proposed legislation would not bring in worse evils. For instance what provision have you made for preventing the girls from going astray ? We have only 3,972 hospitals in the whole of British India and there are no maternity arrangements in most of them. What would become of the poorer girls whose fathers cannot support them ? You have no orphan asylums, etc., see my pamphlets.

Q. You are assuming that every girl will go wrong. Cases according to us can only be very few.

A. No, only a percentage of them would go wrong.

Q. Why a percentage ?

A. Because that is human nature.

Q. Do you mean to assert that every girl who is not married till 14 will go wrong ?

A. No. A percentage.

Q. What is the percentage then that you apprehend will go wrong ?

A. Between 10 and 20 per cent. How do you provide for those 10%. Just imagine their condition when they will go astray. They will be driven to prostitution and their condition would be very much worse. They will contract all sorts of venereal diseases and spread them. That will be against the interests of the whole future generation. I am basing my statement upon the facts collected by Judge Lindsay of Denver who was for 25 years a Judge of the Juvenile court and came across such cases in his official capacity.

Q. Do you think that the conditions in America are similar ?

A. They are not. This is all the more reason that things would be worse with us.

Q. Certainly not. The two sexes mix so freely in America.

A. Would that state of things with regard to mixing of sexes remain in your reforming zeal ? Then you have no hospitals, no maternity homes, no orphanages, no foundling hospitals, no poor laws, no free treatment for venereal diseases. We are too poor to provide for these and the people are too poor to pay for even the medicines.

Q. It has remained upto now. At present at any rate there is that difference.

A. Even now I find conditions as regards restraint are very much different in the reformed community.

Q. But the reformed community is not even 1% of the whole community. Free mixing of the sexes makes certain things possible which are impossible here in a Hindu Home ?

A. But you forget another thing. The latitude of Denver is 39° 9' and India, Kashmir excepted, is 10 degrees nearer the Tropic of Cancer.

Q. Does higher latitude make them prone to be chaste or un-chaste ?

A. No. Girls upto 15 are likely to be more chaste in higher latitudes than in lower latitudes.

Q. What is your authority for that proposition ?

A. I would refer you to *Encyclopædia Britannica*. Wherein it is stated that the age of puberty varies from 9th year in the tropics to 16 in Norway. Therefore the age of puberty is higher in the U. S. A. than it is here.

Q. What do you think is the age in Denver ?

A. 13, 14 or 15. We can take it therefore that a very large percentage of our girls will attain puberty earlier than theirs. They will be longer under the influence of sexual desire and they will have to overcome sexual desire for a longer time if they are not married till 15. I know of mothers at 11.

Q. That must be very exceptional. How many cases do you know ? Do you know of 6 cases ?

A. I know of 2.

Q. Within how many years ?

A. 30 or 40 years. The cases that I am referring to are within my personal knowledge. The father was 16 and the girl was 11. One is a case of my next door neighbour.

Q. Would you call it an exceptional case ?

A. Yes.

Q. Do many girls become mothers under 12 ?

A. Hardly 1%.

Q. What about below 13 ?

A. From enquiry at the maternity home I find that out of 800 cases there were only 3 such cases.

Q. That is also uncommon then ?

A. Yes.

Q. What about girl mothers under 14 ?

A. In my book I have cited the case of my own daughter.

Q. We also know that it cannot apply to everybody in Bengal. What do you think is the percentage of mothers below 14 ?

A. It is not very much more. It may be altogether about 5 to 6%.

Q. Then between 14 and 15 ?

A. It is so difficult to ascertain the age.

Q. In any case girl mothers under 14 are not common ?

A. I can't say that. It sometimes happens.

Q. When only 5 or 6% occur am I not justified in saying that it is uncommon ?

A. You can call that a very small minority, not very uncommon. There are not very rare cases.

Q. Supposing a girl attains puberty at 8, 9, 10 or 11, would you advise consummation soon after puberty in that case also ?

A. I will have no objection, at any rate.

Q. Are you prepared to admit that early maternity, maternity below 15, is at least one of the causes of deterioration ?

A. Certainly not.

Q. Do you think early maternity by which I mean maternity below 15 has nothing to do with infantile mortality or suffering in health of the mothers ?

A. No.

Q. In Havelock Ellis that you have quoted it is said that 15 to 20 years is the period when you can expect best results. Is that so ?

A. Yes, 'but there he does compare mothers of 15 to 20 with mothers of 20 to 30 and not below 15.

(*Mr. Bhargava* : Because mother-hood below 15 is unthinkable there.)

Q. Then again in your supplement you say Marro has found that the children of mothers of under 21 are superior to those of older mothers both in conduct and intelligence provided the fathers are not too old or too young. The detailed record of individual cases confirms these results both as regards mother and the child. Do you accept that ?

A. I do not accept anything upon which there is no evidence. I have quoted that only for those who are guided so much by medical opinion, for people who do not rely upon facts and evidence but upon the authority of so and so.

Q. Do you mean to say that the authorities that you have quoted do not support you in what you say ?

A. I do not say that, but I do not want anybody's authority and I wish you also not to accept anybody's authority as truths. I want facts. It is a matter of very great regret that your questionnaire is so framed that no evidence can be forthcoming against the proposed bill. The evils of postponing marriage or raising the age of consent beyond puberty cannot be brought out fully.

NOTE.—It was here explained to the witness that the questionnaire gives opportunity to all manner of opinions giving them freely. On this very questionnaire witness was able to give what evidence he liked.

Witness said he has managed to put things in but others have been misled. The questionnaire is in English—it had not been translated and circulated. Moreover they assume facts which should have been matters of enquiry.

Mrs. Nehru : Do you mean to say that if the age is raised the girls are likely to go astray ?

A. Not only many of them will go astray but there are several other things. For instance you raise the age of consent to 14 in intra-marital cases. Young men would be tempted to go in after prostitutes and then they would be contracting venereal diseases far more injurious than any natural way of satisfying those within marital relations.

Chairman : I am very sorry that you are strongly supporting the conclusions of Miss Mayo. Are you of opinion that all these men will go wrong ?

A. I do not see how I support Miss Mayo. I never said that all these men would go wrong. As a matter of fact 75% of the people are being affected with venereal diseases in England and Germany (see Havelock Ellis and M. Block's books and Lajpat Rai's *Unhappy India*). There is no other way of preventing the spread of venereal diseases than by marrying early and sticking to her (see *Damaged Goods* by M. Briant).

Dr. Beadon : You say in your answer to Q. 6 that cohabitation is common after puberty among married couples. Do you think that cohabitation takes place before or after puberty ?

A. Very seldom it takes place before puberty.

Q. Is it fairly practised in Bengal when a girl is aged 8, 9 or 10 ?

A. I have heard such cases amongst the prostitutes.

Q. Do you mean to say that it is common amongst prostitutes ?

A. I have no knowledge.

Q. Does it happen immediately after puberty in the case of young girls who are married at an early age ?

A. Yes.

Q. Do you mean to say that it is allowable for a girl to be consummated immediately after puberty ?

A. Yes.

Q. Do you think that a girl is fit for cohabitation between the ages of 8 and 10 ?

A. Yes, if they had attained puberty before that age.

Q. Will not bad consequences result to the girl from early consummation ?

A. No.

Q. Is there no danger for the girl ?

A. No.

Q. Suppose I tell you and the Doctors also tell you that if maternity occurs at 10 or 11 or 12, there is practically always severe injury to her soft parts, will it make any difference in your opinion ?

A. As a matter of fact the difficulty of parturition increases with the increase of age (see Havelock Ellis's book). I have seen cases where the girls aged over 20 who became mothers for the first time had to undergo serious troubles and difficulties whereas girls below 20 or even below 13 or 14 who became mothers for the first time had very little difficulty.

Q. Would you mind telling us whether you have seen any cases above 20 who became mothers for the first time ?

A. I know some cases.

Q. Will you tell us the number of cases you have seen for the last 10 or 12 years ?

A. I have seen very few cases but I know that in these cases, there was much trouble.

Q. I wanted to know how many cases you have seen for the last 10 or 15 years because few cases in every community are exceptions. Would you have seen 10, 15 or 20 ?

A. I don't think I have seen more than five to ten cases in all these years.

Chairman : The utmost that has been suggested for marriage is 16 or 17. So no discussion is needed of what will happen after 20. Can you give particulars of any cases where you have come across girls becoming mothers say before 14 or 15 is complete ?

A. I know you modern reformers forget that once you go beyond the traditional limit having regard to the economic poverty of our country, the age of marriage would go on increasing appallingly. I say that in the absence of any convincing proof, you have no right to thrust your views upon me.

Dr. Beadon : Supposing if doctors say that there will be lacerations to the inner parts in the cases of early maternity, will not that convince you ?

A. You have got to compare these cases with the cases of first pregnancy in later period. Take 10,000 cases of early pregnancies of primipara and 10,000 cases of late pregnancies of primipara and compare the results of these two and make a note of the injuries that have been sustained in the late mother-hood and then that will be a conclusive proof to show whether early maternity or late maternity is followed by evils. Without that the mere coming forward and saying that evil results follow early maternity is nothing because, after all man judges by his own experience. Have you any such evidence? As a matter of fact my grand-mother-in-law was the mother of 20 children and had over 100 grand children and none of them suffered. I am already a grandfather of 25 grand children and in none of these cases, except one, there was any trouble whatever. This was in the case of my last daughter who was married after 14 and the first child-birth took place in her 17th year. So in all the other cases no doctor's help had been necessary.

Chairman : I must say that you are a very lucky man. There are people who have other kind of experiences.

Mrs. Nehru : Since when this custom of early marriage has come into existence ?

A. I find from Dr. Jolly's book on Hindu law and usage that at any rate it is in existence from the time of *Apasthamba*. According to him it is 800 B.C. and it must have prevailed for several centuries before that.

Q. Do you mean to say that child-marriage is practised from that time ?

A. Yes.

Q. May I take it that you are against very early marriage—say at 5 or 6 ?

A. I am against it but some of my countrymen are not. I belong to the heterodox class.

Q. Do you think that early consummation of marriage also has been prevalent since then ?

A. Yes, after puberty.

Q. Do you think that the Garbhadan ceremony should be performed at an early age ?

A. As a matter of fact it has been enjoined that it should be done after puberty as soon as possible.

Q. Will you quote any text in support of this ?

A. You will find in Dr. Jolly's book a reference about this.

Q. Are not our conditions changing from time to time now-a-days ?

A. Of course.

Q. Do you think then that this custom of early marriage is suitable to our changing conditions ?

A. Early marriage has become an impossible thing for the middle class people living in cities who have broken away from the traditions of the joint family.

Q. Does it not mean therefore that the early marriage system is not suitable to the changing conditions ?

A. Early marriage has become an impossible thing only to that particular portion of the population who have broken from the traditions of joint family and are living in cities and are following other occupations than agriculture, and after all their percentage is very small.

Q. Do you not think that the agriculturists will not similarly be affected by changing conditions ?

A. With regard to agriculturists it has been pointed out by "Westermarck" in his book on Evolution of Human Marriages that an agriculturist's wife and children are a help instead of being an hindrance whereas in our case it has become a burden to maintain the wife and children.

Chairman : You do not mean to say that Westermarck had in his mind the state of things in India where girls of 8, 9 and 10 are married.

Q. Does he say that marriages should be celebrated at 10 or 11 ?

A. It has been specially said with reference to India for he quotes there with approval Sir W. W. Hunter's Annals of Rural Bengal.

Mrs. Nehru : You say that early marriage and early consummation are not suitable to the towns people at present. Will they not affect the agriculturists who are in villages ?

A. The towns people have broken away from the traditions of the joint family.

Q. Can you say whether the agriculturists have not now-a-days to break away from the joint family traditions ? Do they not find economic stress in villages ? Don't you know that many of them go to different places to earn their livelihood ?

A. Even if they go out, the caste panchayats force them to support their family and to respect the traditions and ties of joint family.

Q. Do you mean to say that the towns people don't support their wives and children ?

A. They do support but they do not support their other relations. I have seen in this city brothers driving in motor cars while their sisters are serving as cooks.

Q. I am only asking you this question. Is not the economic stress in villages even greater than in towns ? Do not the villagers have to break from their families ? Do not the members of the joint families have to go to different places ?

A. I do not know that—even then it does not necessarily mean the break up of the joint family.

Q. The idea of the joint family may be there. In practice are they able to live in one place ?

A. Even then there are people in the house to look after the joint family traditions and responsibilities.

Q. Has it any connection with early marriage ? If a boy has to leave his family and go alone leaving his wife behind, don't you think that it is a shame for him to do so ?

A. No, because he is leaving his wife in the joint family which looks after her and her children if any. In all societies many persons have to leave their wives behind them and it is more cruel to the wives in individualistic societies for they have to remain alone.

Q. Do you not think that under the present circumstances early marriage is as unsuitable to villagers as to others ? Do not the conditions that apply to towns people apply to villagers also with a greater force ?

A. I don't agree with you that it applies in a greater force to villagers, on the contrary early marriage is more suited to them (see my pamphlet).

Q. Is the economic stress growing greater and greater in villages ?

A. The economic stress is felt more and more in the villages, but before further mischief is done towards the break up of the joint family traditions, I think that a movement will have to be started for strengthening the ties of the joint families. Things have come to such a stage that the women problem is becoming so very acute that it would be necessary to revert back to the joint family and to strengthen it. A propaganda should be started for rehabilitating it and strengthening its influences.

Chairman : You have suggested propaganda in respect of early marriage. Have you ever done any propaganda for this ?

A. I have taken up this matter by publishing this pamphlet and by writing in the papers.

Mrs. Nehru : You have said that the women problem is becoming very acute. May I know what it is ?

A. The position of women in Europe, as I understand, is the women's problem.

Q. Is there any such movement in India ?

A. Yes.

Q. What is the tendency of that movement ?

A. So far as I know it is in an indefinite shape, but I have heard from two girls attending the annual anniversary of the National Council of Education with which I am connected, saying that "men are our enemies and we should fight with them". That is the kind of talk which I heard amongst them.

Q. May I point out that I take this women's movement to be the women's claim to have equal education with men, equal liberty with men and equal status with men. Are my conclusions correct ?

A. May be but I do not agree that it would be to their advantage as Ellice Key shows in her book on Love and Marriage.

Chairman : You want to keep the women as they are in India now so far as the domestic relations and marital relations are concerned, and you won't give them any voice in the selection of their husbands. Is that what you say ?

A. Yes. Giving voice to women in the selection of their husbands has produced awful results in Europe.

Mrs. Nehru : Do you think that it is desirable to reduce the number of virgin widows ?

A. I think that it is desirable to reduce the number of virgin widows if it is possible to do so.

Q. What steps should be taken to reduce the number of girls from becoming widows say below the age of 15 ?

A. By widow marriage. There is no legal bar now, we should remember that the number of young widows is very insignificant say only 1·6%. We have also to remember that the position of maidens is much worse. They are similarly without husbands and they suffer from tentalus torment.

Mr. Mudaliyar : Do you mean to say that in order to give a chance to the maidens it is better to have widows rather than maidens ?

A. It is much better or rather more equitable.

Mr. Mitra : Are you an exponent of early marriage ?

A. Yes.

Q. In fact though you cite Shastras may I take it that you don't rely on shastrie authorities for this ?

A. No.

Q. Do you really think that girls attain puberty at 8 in these times ?

A. No.

Q. You know that the ideal of Hindu marriage is for the union of two souls. You also know that according to the Texts they prefer the ages of 8, 9, 10 and upto 12 for marriage. If that is the ideal, will you tell me how far this early marriage will encourage that ideal ?

A. The objects of early marriage are that the boys and girls might unite into the families in which they are married, that there may not be disharmony in the joint family, that there is a better chance of chastity being preserved, that the difficulties will be very much if the girls are not married during the lifetime of their fathers and that in early marriage there is greater marital happiness — Husband and wife are better unified as it were if married early.

Q. Shall I say that you differ from the old orthodox people in this way, i.e., you want marriage after puberty while they were for pre-puberty marriages. Am I correct in this summing up ?

A. I am for marriage at about puberty and as that age differs in different girls it is safer to marry them before 12 than later.

Q. Will you support any legislation fixing the marriageable age at 12 ?

A. I would not interfere with the discretion of the parents.

Q. Don't you think that there is really a risk in consummation at 12 even if she attains puberty ?

A. There is no risk.

Q. So in the educated middle classes on account of economic stress or other circumstances, if girls are married late, do you find from your experience that girls go often astray ?

A. Not often.

Q. Do you seriously think that these girls will go astray if they are married after 12 ?

A. I say that there is a very great risk with regard to the small percentage of girls going astray.

Mr. Bhargava : You have been pleased to say that there is danger for the boys also to go astray. May I know at what age should a boy be married so as to prevent him from going astray ?

A. I would not fix any age, and would not interfere with the discretion of the parents.

Q. Now as at present the discretion of the parents is exercised so far as the boys and girls are concerned. Would you like that there should be a certain standard of compulsory education for boys and girls till their marriage ?

A. With regard to the compulsory education for boys I am one with you but not for girls.

Q. Will the compulsory education of boys not tamper with the discretion of the parents ?

A. It may some times tamper with the discretion of parents.

Q. So if there is a law enjoining discipline in a particular manner, will that not be better ?

A. Yes.

Q. Supposing it is proved to your satisfaction that child marriage is attended with bad physiological consequences, will this objection that the discretion of parents will be interfered with have any influence with you ?

A. I would agree with you provided there are no other circumstances which outweigh the disadvantages of early marriage.

Q. Does not puberty amongst the agriculturists come later in life than amongst the Brahmins ?

A. I have no personal knowledge on this point.

Q. Will you be surprised if I tell you that in Northern India and in some other places and amongst the agriculturists the marriage of girls takes place 3 or 4 years after puberty and there is no complaint of girls going astray ?

A. There is nothing to be surprised at this.

Q. Now I want to ask you something about the prostitutes. What is the usual age when they begin their work here ?

A. Between 12 and 13 and sometimes earlier.

Q. If this age is raised by legislation will it be for their benefit or for their disadvantage or for the disadvantage of society ?

A. My principal objection is with regard to intra-marital cases. With regard to extra-marital cases there are several things to be considered. I personally have no objection to raise the age of consent to 16 but you have also to take into consideration that some of these young girls would seduce the boys perhaps sometimes younger than them and in those cases the punishment should be almost nominal.

Q. My point is this. Would it be to the entire advantage of the society to insist that no girl should be allowed to ply her trade ?

A. I cannot answer this question because I cannot put myself in their position, but I don't know whether it would not be a very great hardship amongst them ?

Q. What is the hardship amongst them ?

A. Some of them live on it and perhaps support their old mothers and some of them may have their great sexual desire which strong sexuality might have been an inherited thing. Having regard to that fact, it would be cruel to debar them from the enjoyment of sexuality.

Mr. Bhargava : I want to know at what age would you leave them to enter into this profession ?

A. That is a thing which is strictly not under your purview but I think anything over 14 would be a hardship upon them.

Q. You believe that there is an inherited desire in them for sexual intercourse. Will you say that if such desire is inherited on for generations then it creates a morbid craving in the young girls to satisfy this desire as soon as puberty is attained ?

A. The desire of sexuality is natural. They might have very inordinate sexuality.

Q. When you married your daughter at 14 was she educated ?

A. Yes.

Q. Up to what standard ?

A. She could read and write a little bit of English.

Q. I take it she must be read up to the matriculation standard ?

A. Say about the 7th Class.

Q. I suppose you know what usually happens in Hindu families. I do not think in your family particularly there are any more precautions taken than in other families.

A. That depends on the head of the families.

Q. Did you take any special precautions for your girls ?

A. I did. I never allowed my girls to go to school. I educated them all at home.

Q. Are you personally against sending girls to schools ?

A. To the schools as they are now managed.

Q. Even when girls are 8 or 10 years old ?

A. Yes.

Q. You spoke something about puja, mantras by which all desires are attempted to be sublimated. Is it successful in all cases ?

A. No, otherwise everyone would have been a saint.

Q. Is there any difference between the mantras taught to maidens and the mantras taught to widows ?

A. I do not know whether there is any difference.

Q. If you raise the age from 13 to 14 you think the whole Hindu society would fall ?

A. There are two things raising the age of marriage and the other is raising the age of consent.

Q. May I take it that if you raise the age of consent by one year the whole Hindu society fabric will fall down ?

A. It is not likely.

Q. Even if you raise it by 2 years is it not likely ?

A. No.

Q. So I understand that you prefer the *via medius* of 15.

A. Yes.

Mr. Shah Nawaz : At what age boys reach the age of puberty in Bengal ?

A. 13 or 14.

Q. Do you think that boys have intense desire to have sexual intercourse with women ?

A. There is no measure of intensity in desire, but that have a desire.

Q. Can they resist the desire for a year or two ?

A. They can but sometimes they do indulge in vicious practices.

Q. Do boys generally resist this temptation for a year or two ?

A. I cannot tell you how many boys fall a prey to temptation or how many resist it.

Q. Would it be a large percentage or a small percentage ?

A. My idea is that it would be about half and half, that is to say, half succumb to all these sexual desires and try to gratify it by natural or unnatural means and the other half resist it.

Q. And between 15 and 16 ?

A. The older the boys grow the greater the changes of their going wrong.

Q. Would you force marriage on the boys ?

A. I think it would be better.

Q. Would you force marriage on the boys at the age of 11 or 12 ?

A. No.

Q. How long after puberty girls have intense desire for sexual intercourse ?

A. It is immediately after puberty.

Q. Is it such an intense desire that most of them cannot resist it ?

A. It is for you to ask the women.

Q. I want to know whether from the scientific point of view women at the age of 15 are likely to conceive more than at the age of 17 or 18 or 19 ?

A. So far as our society is concerned I think the first conception takes place generally about 14.

Q. In your society only 5% conceive at the age of 14.

A. In our society all the girls are married.

Q. Don't you think that if they have an intensive desire they would conceive ? Don't you think because only 5% conceive at the age of 14 or 15 they have really very little desire ?

A. It does not follow. I do not see the bearing of this question—what has desire got to do with conception ?

Q. Apart from religious injunction you give your arguments in favour of pre-puberty marriages.

A. Yes, because it is not known when the girl attains puberty. It is not known whether it would be 11, 12 or 13. You have no indication. Therefore to be on the safe side they marry the girls earlier.

Q. Don't you think it would be far better to engage the girl and the boy at the age of 11 and then marry her as soon as she arrives at the age of puberty ?

A. Practically that is our rule.

Q. Would you like that ?

A. Yes, but as soon as the girl attains puberty if you want to marry her it is not always that you can get a suitable bridegroom at a moment's notice.

Q. But she will be already engaged.

A. That was the idea but people cannot always rely upon these agreements and the practical difficulties stand in the way.

Q. Would you revert to that ideal of engagement which can be absolved ?

A. I say there are practical difficulties.

Q. Is that one of the reasons for early marriage ?

A. Yes.

Q. Would you enforce this system on the European families ?

A. Yes, if they want it.

Q. Do you believe in caste system ?

A. Yes.

Q. Would you enforce caste system on the Mussalmans ?

A. Yes, it would be much better. Probably you are putting this question in order to show what ridiculous opinions I hold. I say it would be better for you to adopt it in its purity. I do not know if you know what is the underlying principle of caste system.

Mr. Kadri: Some witnesses have told us that according to Hindu Shastras girls should be educated as much as boys. Do you agree with that ?

A. I do not think it is proper to educate them in the same way.

Q. What is your view ?

A. I am in agreement with Ellen Key the leader of the Feminine movement in the continent that their education should be of a nature that would fit them to be good mothers and in order to be good mothers they should be able to direct the

education of their children and their health. They should also be able to train up their children properly. It should be a sort of education which should not interfere with their duties as mothers. During the menstruation women should get rest and during pregnancy they should get rest.

Q. Don't you think that early marriage and early maternity would interfere with the education of this kind?

A. As a matter of fact they get kindergarten system of education in their husband's house. The mothers-in-law teach them.

Q. Are there many such mothers-in-law who teach their daughters-in-law?

A. Yes, they teach them cooking, sewing and rearing up of their children and other domestic duties.

Q. Is it your opinion that early marriage and early maternity does not interfere with education?

A. Not to any great extent but in a bad household everything goes wrong.

Written Statement, dated 11th August 1928, of C. I. REMFRY, (Mrs. DOUGLAS REMFRY), Acting Honorary Secretary, Bengal Presidency Council of Women, for and on behalf of the Committee, 2, Victoria Terrace, Calcutta.

1. Yes, but among the educated and enlightened and more advanced. Among the orthodox there is no desire to alter the law and among the lower and uneducated classes there is no knowledge of the law.

2. (2) There is a distinct case for an advance even though the benefits may only operate for the present in properly policed areas and amongst enlightened families.

3. (1) Definitely yes. (b) As far as the districts of Eastern Bengal are concerned the law has had absolutely no success in either preventing or reducing rape. (c) Education, beginning with compulsory primary education and the teaching of elementary hygiene.

4. (2) Public opinion has been stimulated, but this is due more to social progress than to the law.

(3) The age of marriage has long been raised among individual progressive people; but this does not touch the bulk of the population.

The steps we propose are:—Education and health and social propaganda both in and out of schools.

5. From the age of 8 upwards to 12 and 14 among the more enlightened and progressive classes.

7. The orthodox Hindu families and also the illiterate people firmly believe that it is a religious injunction and the priests encourage this belief and all the early marriage in India is now traceable to this, but no such injunction was in the Shastras.

The penalty for breach relates to the re-birth of the parents.

8. These ceremonies do not belong to Bengal.

9. Puberty covers a period of years and the first attainment we do not consider sufficient indication for the consummation of marriage, as physical development is not completed until 3 or 4 years later.

10. From our knowledge of Indian girls we should say that at no age are they competent to give an intelligent consent but it is impossible to generalise.

11. I have only come across two or three such cases in the last few years. They were all girls about 8 or 9 years of age and the injuries consisted of bad bruising and laceration. In my opinion the mental shock in such cases is perhaps worse than the physical injury. . .

12. I certainly think that early maternity, especially if an annual affair, is responsible for high maternal mortality. The mother dies from sheer exhaustion. Some time ago I delivered a girl of 22 years of age of her 8th child all children living. She died two months later of no actual disease, but as she said to me 'I have no wish to live.' She was actually worn out. I have had two or three similar experiences. If the mothers do not die early they fall into a state of chronic ill health. As far as my experience goes, the babies of such people are born healthy enough, but often die in early childhood say at 2 or 3 years of age often enough for lack of care, but how can a young mother whose whole life is spent in being a 'baby factory,' devote the necessary time to caring for the well-being of the little ones, or for her own intellectual and physical development?

13. Quite lately, but not so much due to the amendment of 1925 as to the public interest aroused by Miss Mayo's book and the resentment felt at its publication.

Confined to the educated classes.

14. Orthodox Hindus in this part of the country still cleave to early marriage; although the more enlightened and progressive classes of the community are putting the age of marriage later and later.

15. The chief difficulty in determining the age of a girl is the examination for ascertaining her age, and for this reason we would urge the employment of *women* doctors for all cases of girls coming before the courts in relation to these and kindred sections in this and other Acts.

16. It is easier at 14 than 13 years of age; but the margin of error is considerably minimised as the age advances.

17. We do separate them. The nature of punishment under the Act seems sufficient.

18. No, except that all cases of this nature should be heard in *camera*.

20. We cannot control the Age of Consent within the marital bond, but if the minimum age of marriage is raised we consider that would be the effective method of controlling the situation. We also consider that, of the two alternatives, the one we have named would be in consonance with public opinion in our part of the country.

21. Social reform by means of education and social propaganda.

Oral Evidence of Dr. (Mrs.) EDITH GHOSH representative of Bengal Presidency Council of Women.

(Calcutta. 19th December 1928).

Mrs. Beadon : How long have you been working as doctor?

A. I have been working for 7 years as a doctor and for many years in other ways. That is to say I have been living more or less among orthodox communities for the last 20 years.

Q. As a doctor have you been doing mixed practice or practice among women?

A. I have been practising among women.

Q. Are you in charge of any hospital?

A. I am a private practitioner but I have been in charge of Corporation maternity hospital from time to time.

Q. Is this Corporation Maternity Hospital in northern part of Calcutta?

A. Yes.

Q. How many cases do you get?

A. We get from 50 to 70 cases a month.

Q. How long have you been in charge of that hospital?

A. I have never been in charge but I have done duty there. Last year I did 5 months' duty. A friend of mine was in charge and I was there night and day because it was expected that it would be a failure. I remained there to try and make it a success.

Q. How long ago was it started ?

A. It is now running for the last six or seven years.

Q. Are there more cases now ?

A. Last year there were about 100 cases a month.

Q. What people do they get—do they get Europeans ?

A. We do not get Anglo Indians or Europeans. We get mostly Hindus but not very many Mohamedans though I see that poor Mohamedans are coming now.

Q. What about Hindus—are they fairly well off ?

A. They have to pay nothing.

Q. Then is it patronised mostly by poor people ?

A. By poor people and by people who are considerably better off.

Q. Do you get first maternity cases ?

A. When I was there we got a number of first cases.

Q. Could you tell us what age were they mostly ?

A. They were young. Last time when I was there 10 months ago I myself delivered 2 girls of 12, but that is unusual.

Q. How did they go through labour ?

A. They went through it very easily and I was very greatly surprised that they had no trouble.

Q. Were they in the hospital for sometime before delivery ?

A. Yes, for five days.

Q. Besides those in the last few months have you met such girls ?

A. Yes, but 14 and 15 are common.

Q. What is your general impression—have they generally easy labour or have they difficult labour ?

A. That is rather difficult to say. 3 years ago I attended girls in a doctor's family but I am sorry to say that one girl who was 13 and very difficult labour and she had a very big child. In Brahman houses these things are much worse.

Q. We have been told that in some cases of first labours there is a great deal of trouble. Is that your experience ?

A. That is my experience in the cases that I have myself attended. I attended hospital every day and I have seen a number of cases that have happened outside and brought into Calcutta to repair the damage. Only this month I have seen two very very sad cases of girls of 13 or 14.

Q. What was the damage—was it tearing of the perineum ?

A. It was much worse. It was formation of fistula. Many such cases are now coming because I think Major Gow has got reputation of treating them successfully.

Q. Are those cases of fistula mostly among young girls ?

A. I think they are mostly in young girls. I have seen one or two in elderly ones but mostly it is in young women.

Q. In your practice do you find it is necessary to put on forceps or to use any sort of means to deliver these young girls ?

A. I have not done it myself because they are likely to have a number of children and putting on of forceps would cause hardship. In my own cases I got through with little patience.

Q. What do you think about the health of girls after delivery—do you find that they suffer afterwards ?

A. I think provided they do not have a baby every year they do not seem to suffer.

Q. Have you seen cases in which there has been frequent pregnancy after 20 ?

A. Yes, I saw a girl last year. I saw her having abortion and it was her 8th pregnancy and her age was 22. Year before I saw a Madrasi girl, she was only 21 and that was her 7th child. I saw her later and I told her you are not trying to get better. She said it is no use my living because maternity comes on every year. She did not want to live. She died a few months later of inanition. She did not make any effort to live.

Q. Do you find that tuberculosis is common among those women ?

A. I do not see it among the poor people so much. It is common in the middle class people and rich people but among the *basti* people I have not seen cases.

Q. But the rich people must be able to stand much better ?

A. I have seen it more commonly in rich people's houses. Of course *basti* people are not in *purdah*, they are out and about and rich people are shut up.

Q. We were told yesterday by one of the witnesses that he found osteo-malacia. Have you seen it here ?

A. I think it is more in the Marwaris. I have seen 2 cases of osteo-malacia among Bengalis but I have seen any number in the Marwari community.

Q. Marwari people live in Calcutta or do they come from outside ? I am asking because osteo-malacia is very very common in the Punjab and the U. P. and I want to know whether inhabitants of other provinces have brought it here ?

A. I have seen one or two cases actually developing osteo-malacia here.

Q. What about anæmia during pregnancy ?

A. I think really at the present moment that is our greatest difficulty.

Q. What time do women get it ?

A. I have seen it among poor Bengali women.

Q. At what ages do you find it ?

A. In 14 or 15.

Q. Is it more common than it used to be ?

A. It is difficult to say.

Q. Are those girls among whom you find anæmia well nourished or are they poor ?

A. The cases that I have seen I would call them poorly nourished

Q. They were not starving ?

A. No.

Q. Is it always associated with pregnancy ?

A. Yes.

Q. After pregnancy do they recover ?

A. Some of them die but in my own cases I have been fortunate. I have got them out of *basti* and have managed to get them admitted to the hospital before it was too late.

Q. In the majority of cases do you find it in the first child-birth or second child-birth ?

A. I occasionally see it in the first child-birth. I can only recall one such case.

Q. Dr. Balfour told us that it does not come during the first child-birth but it comes on later.

A. I only remember one case in which it was in the first child-birth.

Q. What about children of those young mothers ?

A. Those that I know of or I delivered were quite all right. I keep an eye on them for curiosity sake but I have not heard they died but I cannot say from my personal experience.

Q. You think that children of these young mothers get on as well as children of old mothers ?

A. Yes, that is what I have seen.

Q. Have you noticed them growing up—do you think they withstand well ?

A. I have not come to that stage.

Chairman : Will you be able to tell us from your observation of cases of mothers of over 16 and below 16 whether in the case of girls who become mothers after 16—there is anything that may be distinctly better in the case of younger mothers, for instance less trouble of labour better children, better health.

A. Generally speaking a mother of 16 or 17 is better able to look after her child than a baby of 12 or 13 because after all a child of 12 will be nursing a baby and she herself requires somebody to look after her. Indian girls at 16 or 17 are quite a little women.

Q. Do you think that married girls before 13 are likely to suffer even if there is no pregnancy ?

A. I think they suffer mentally and especially in joint family because they make the life of the girl a hell.

Q. I am speaking of the results of more cohabitation—do they suffer physically or mentally ?

A. If you put it mentally there is trouble but physically I do not think so.

Q. Is it your opinion that more cohabitation with a girl after puberty without maternity is not injurious ? Do you think there is no physical injury ?

A. I have not seen any bad results say after 14 but I have seen injuries girls before that. I have seen several girls of 11 and 12 but from what I have seen I can say that physical injury is nothing as compared with mental shock. I think it is 10 times worse than any physical injury. I have seen one or two girls becoming mental wrecks.

Mrs. Nehru : In para. 3 of your statement you say that many cases of abduction, seduction and rape take place. Can you give any details of this ?

A. When I was at the maternity hospital two little girls were brought to me, one was about 6 and the other about 8 who were obviously raped. They were playing out-door.

Q. What class they belonged to ?

A. They were sisters as far as I remember. The mother was an up-country Hindu woman. She had let them out in the street. I had great difficulty in convincing her that it was on account of her carelessness. She was obviously so annoyed that she did not bring them back.

Q. Do you know of any marital cases ?

A. I saw a very bad marital case. There was very bad injury.

Q. What was the age of that girl ?

A. They were all young girls. I do not remember a case older than 14. One was a girl of 13 married to a man of 75 in Calcutta.

Q. What caste was that ?

A. The man had already two or three wives. He was a very rich man. She was alive but he died shortly after.

Q. What caste was that ?

A. I do not remember the caste, but the man was a very rich man and very well known in Calcutta. He had two or three wives but they died shortly after marriage.

Q. Is frequent child-birth or early maternity more responsible for the physical deterioration of the girls ?

A. In my opinion provided child-birth does not frequently come on, early maternity is not so disastrous. In the case of frequency of child-births the mother does not get any rest to recoup her health.

Mrs. Nehru : Do you think that the later children of young mothers are better than the children who are born earlier ?

A. What I find is that if there is frequency of child-births the later children are not so good. Even if they are born fairly good, the mother is unable to feed them properly.

Dr. Beadon : Do you find that the girl mothers have sufficient nourishment for the babies ?

A. They can manage with the first and second babies. In our Baby Clinique we very rarely get first and second children. But even these children they cannot feed for more than about 9 months.

Mr. Bhargava : In para. 11 you say that the mental shock due to early consumption is worse than the physical injury. Is there mental shock or not if the girl is above 14 ?

A. I saw a great deal of hysteria cases, but it is very difficult to get at the cause of that. I do very strongly suspect that it has something to do with marital relations.

Q. Can you say whether above 15 or 16 there will be mental shock or not ?

A. The older the girl is the less the mental shock. The older a girl is the better she is able to cope with it.

Q. Do you think 15 or 16 a safe age ?

A. It is much more desirable than 13 or 14.

Q. What do you think is a safe age ?

A. About 16.

Q. Supposing one girl becomes a mother at an early age and there is frequency of child-births, and another girl becomes a mother at a later age, say 16, and there is frequency as in the first case, do you expect any difference in the health of the girls ?

A. I think the girl who becomes a mother at 12 and has frequency of child-births becomes prematurely older than the girl who becomes a mother for the first time at 16.

Q. What about the health of the children ?

A. It is a difficult thing to say.

Q. As regards these children you say that they are born healthy enough, but often die in early childhood say at 2 or 3 years of age often for lack of care. Do you mean to say that apparently though they are healthy, they are potentially weak ?

A. If a young girl gets too many children she cannot devote sufficient time to caring for the wellbeing of the children. The resistance of the children to disease is low so that they die early.

Q. Do you think physically they are weaker ?

A. Yes.

Mr. Mitra : Have you any experience of the village life of Bengal ?

A. I know very little about it.

Q. Your experience is then confined only to Calcutta.

A. Yes ; I have not had very much experience of the villages.

Q. Can you say that girls in India mature earlier than the girls in England or on the continent ?

A. I know that there is an idea that it is earlier. But that has not been my experience. Amongst the people I have come across it is 12 to 14.

Q. Is it the same in Europe also ?

A. It is 13 to 14 in Europe.

Q. Is it your experience that amongst people who marry earlier, the girls mature early ?

A. This is really the crux of the question. Girls who are in families where these things are discussed around them attain puberty earlier.

Q. Do you think that the first child-birth after 20 is generally more difficult than child-birth between 16 and 20.

A. It is a little more difficult but there is not much difference.

Q. What do you think should be the ideal age of marriage?

A. I would have it at 18, but if you cannot have 18, it can be 16. In no case should it be lower than 16.

Q. It has been suggested by some people that if girls are not consummated immediately after puberty, there will be a tendency for the girls to go astray. Do you think there is any such risk?

A. I should not think so considering that they are always very well looked after. I do not think it ought to happen.

Dr. Beadon : We have been told that the coming on of the first menses is a sign that the sexual urge has begun in the girl. What is your opinion? Do you think that the desire is born at that moment and the girl should be satisfied?

A. It all depends upon the surroundings. If the women around put it into the minds of the girl, there is trouble. In the case of girls who are not brought up in that way there is no trouble at all.

Mr. Mitra : In para. 7 you say that people firmly believe that it is a religious injunction and the priests encourage this belief, but no such injunction was in the Sastras. Do you support this statement from your own experience?

A. I think in all orthodox families it is the trouble.

Q. Do you think it is due to custom or is it due to Sastras?

A. I think there is something in the Sastras and they are taken advantage of by the Priests. I think it is something like the controversy about the Book of Common Prayer. It is some sort of feeling due to ancient tradition. It may or may not be enjoined in the Sastras.

Q. In para. 8 you say that the ceremonies do not belong to Bengal. Can you say this from your own experience?

A. It is not general in Calcutta; but it is common in the rural areas, but I have no personal experience of it.

Q. In para. 14 you say that orthodox people still cling to early marriages, though the enlightened classes are putting them off later and later. Do you think the law has anything to do with this raising of the age?

A. I think it is really the economic condition that is really raising the age more than anything else. I think that it is the economic condition that is going to solve the problem more than all your laws.

Q. Do you not think that raising of the age of marriage will not be much effective unless the age of marriage is fixed by law sufficiently high?

A. I think the marriage age ought to be fixed, and it ought to be 16. It is no use trying to have a lower age. The orthodox community is very much against it as it is. If the law is passed it will be broken in some cases, but anybody who wants to take advantage of it will have the benefit of the law.

Q. Are you aware that the orthodox view is that marriages should take place at 8 and 10 but they do not generally observe it?

A. Yes.

Mr. Kadri : You say that the age of marriage has long been raised amongst individual progressive people? How far has it been raised?

A. Of course the progressive people are a very small part of the community. But amongst Muhammadans the age of marriage is higher. It is generally above 16. I have seen only one girl mother at 13 amongst Muhammadans.

Q. How long ago was that?

A. I do not remember exactly but it was some years ago.

Q. In para. 10 you say that at no age are Indian girls competent to give intelligent consent, but it is impossible to generalise. As regards extra-marital relations what age would you fix for consent?

A. 18.

Q. In para. 15 you refer to the employment of women doctors for all cases of girls coming before the courts in relation to these and kindred sections. We have been told that it is very difficult for doctors to determine the age from mere appearances and a better thing would be to keep more accurate register of births. Do you not think so?

A. It would take a long time before you can do that.

Q. Do you not think that accurate keeping of the birth register would be more satisfactory?

A. I am very dubious about. I had cases like that, and I know that people can be bribed.

Q. Several witnesses have told us that infantile and maternal mortality is due more to frequency of maternity and not early consummation. Do you agree?

A. I do not want to touch the question of birth control, but I am sure it is the frequency of births that causes the trouble. I do not think any of us wants a girl at 12 to become a mother, but I cannot say whether it has disastrous results.

Mr. Kanhaiya Lal: You recommend fixing an age for marriage. Supposing it is not possible to fix an age for marriage, what age would you recommend for consummation?

A. I would recommend 16.

Q. What age would be the safe age for maternity according to Indian conditions?

A. 16 I should think at the earliest.

Q. What period do you think should elapse after the first appearance of the menses before consummation can be permitted?

A. I would not allow it before puberty whatever be the age.

Q. Can you tell us whether babies born to girl mothers at 13 to 16 are smaller in size and less in weight than babies born to mothers over 16?

A. We would not expect babies of girls under 16 would be as strong and healthy and of normal weight. I should not like to preach that it would be.

Q. One difficulty has been that cases of breaches of the law are not brought to light, because nobody knows when the offence has been committed. Can you suggest any measures for making the law effective?

A. The difficulty is that nobody would do it.

Q. Would women's associations look after these cases and help in bringing them to light?

A. I daresay they would do it. But is the publicity of the affair that people do not like, and a family would rather like to keep quiet.

Q. Would you be in favour of a system of registration of marriages giving the names and the ages of the marrying parties so that it might serve as evidence in cases of breaches of the law?

A. It would be good if it can be done, but I do not think it can be done.

Q. Where is the difficulty?

A. The difficulty is in keeping correct records.

Q. Under the existing law Muhammadan marriages are allowed to be registered, as also Christian and Parsi marriages. If there is a system of registration of marriages your association can look after these cases and say whether the law has been broken.

A. It is extremely difficult to find out these cases. Once you set the law in motion you cannot know where it will land you. I do not think the law can do much good in this matter. It is only public opinion which should change it.

Q. Do you think your association would look after these cases?

A. I cannot commit them to that.

Q. Supposing we require medical men and women who get these cases to report cases where there has been a breach of the law to the proper authority, would they do it?

A. I do not think it would do any good. On the other hand I think it would put the hands of the clock back a little farther.

Q. Supposing there is a breach of the law, what would you suggest as a remedy?

A. You must try and do something privately by talking and reasoning with people. But setting the law in motion would be asking for trouble. I have myself attended such cases and have many a time advised them. We can do much more like that.

Q. Do you think medical men would report confidentially to the proper authority?

A. I am doubtful.

Q. Can you tell us what the real difficulty is?

A. When you are interfering with private family affairs you have got to be very careful. Very few of us would be courageous enough to do these things.

Q. We have been told that one of the reasons of their non-reporting would be that parents would not go to them once they come to know that the doctors would report. Is that so?

A. Naturally they will not go. Personally I would do the same.

Q. Can you not then give us any constructive suggestion as to how to bring these cases to light?

A. I think the economic question is largely going to settle the age question. At the same time I think people going about and preaching would do a great deal more than anything that you can do officially. But if the law is there anybody who wants to take advantage of it may do so.

Written Statement of the Honorary Secretary, the Bengal Social Reform League, Albert Institute Buildings, Second Floor, 15, College Square, Calcutta, dated 9th November 1928.

1. Yes: there is dissatisfaction in regard to both the sections. Other circumstances than merely those mentioned in section 375 may invalidate the woman's consent. Her being below a certain age should constitute her unfit to give her consent on the ground that she has not yet a sufficient mental understanding to do so. Dissatisfaction in regard to sec. 376 is felt not because the law is in operative, but because unless the means for putting it into motion are improved as suggested in our answer to Q. 3 below, the law will remain a dead letter in most cases of offences of this kind.

2. We suggest an advance on the present law (a) because puberty in all cases may not be attained at 12, (b) because it is questionable whether merely the attainment of puberty is guarantee of a sufficiently fit physical state for intercourse, (c) because the state of mental maturity which should also be a condition to be attained before consent can be given in order to enable the girl to realise the full significance and consequences of her consent, does not always synchronise with physical maturity and is often developed very much later.

3. Yes, such cases are frequent. No, the amendment has not prevented or reduced cases of rape or seduction to any appreciable extent. In order to make

the law effective we would propose that some powers be given to local Panchayats or Union Boards to impose punishment to be prescribed by law and that the police be made to work in co-operation with them.

4. No. To make the law effective we would propose the raising of the marriage age to and fixing it at not less than 16 years in case of girls. This in the opinion of the Bengal Social Reform League is the only effective means.

In my personal opinion however, the marriage age of girls should be fixed at not less than 18.

5. It varies over a very large margin. The average age may be put at fourteen, not less.

6. Yes, all three cases are met with. Very few such cases, however, come to court, due perhaps to a prejudice which makes people hold it unseemly to drag such matters into court due to misplaced sense of decency.

7. No. The feelings that actuate an early consummation, cannot be conceived to have even the remotest connection with any religious sentiment or injunction.

8. The ceremony, as far as we are able to ascertain, has become obsolete.

9. No. At least three years should be allowed to elapse between puberty and consummation.

10. Sixteen in the opinion of the Bengal Social Reform League, but eighteen in my own.

11. We have come across many such instances ; they are too common and too many to be remembered separately.

12. It is obvious that early consummation and maternity are responsible for high maternal and infantile mortality.

13. There is a very strong feeling among the comparatively younger generation of the educated section of the people in favour of an extension.

14. Not, if they can help it.

15. Difficulties have been experienced. To minimise these we would suggest a correct and stringent system of birth registration and proper medical examination by accredited doctors.

16. We are not competent to give a qualified opinion on this point.

17. We would suggest a separation of the two classes. In cases of extra-marital offences, we would like the punishment as prescribed in sec. 376 I. P. C. to remain as it is. In marital cases, we would advocate simple imprisonment for two years or both.

18. We would suggest an 'in camera' trial in marital cases.

19. A suitable answer to this point depends upon the decision arrived at in regard to the question of child marriage.

20. It is equally imperative to raise the minimum age of marriage, as it is to raise the age of consent, the claims of neither can be advanced over, and to the detriment of the other. Fixing the minimum marriageable age would be more in consonance with public opinion in our part of the country.

21. Both.

**Oral Evidence of ACHARYA MURALIDHAR BANERJEE, President,
and Mr. DVIJENDRA NATH DUTT, Secretary, Bengal Social
Reform League, Calcutta.**

(Calcutta, 19th December 1928.)

Dr. Bealon : You say that you have come across many cases of injury due to early consummation. Can you give us one or two cases ? Several witnesses have told us that these cases are daily going on but they never go to court.

A. I have seen several cases where there has been injury as a result of early consummation.

Q. Do you know of any cases in the last 4 or 5 years ?

A. I have not taken care to note the details. I remember a recent case in the family of one of my friends, where on account of premature child-birth the infant died. The mother was very seriously ill and she recovered after a long course of treatment.

Q. What was the age of the girl ?

A. 14. The case happened only very recently, about a month back.

Q. Was it a case of still-born child ?

A. The child died soon after birth. It was necessary to have recourse to forceps delivery.

Q. Was the girl a well developed and healthy girl before delivery ?

A. She was a well developed girl. The case happened in Sibpur.

Q. Do you know of many such cases ?

A. Yes.

Q. Have you got any experience of the children of these young mothers ? Do they grow strong and healthy as the children of older mothers ?

A. In most cases the children are weak, though in exceptional cases they might be strong.

Mrs. Nehru : You suggest that local Panchayats or Union Boards should try cases. Is it only marital cases that you are referring to ?

A. Both marital and extra-marital cases.

Q. What would you suggest in towns where such Panchayats do not exist ?

A. In towns it may not be necessary. But in the villages it is necessary to make some special provision like that. I can assure this Committee that the trials can be very well conducted by these Union Boards in the village. With regard to towns these can be done by expert magistrates as they are being done at present.

Q. Would you like the right of complaint to be with the public as it is at present ?

A. Yes.

Q. Do you think anybody will care to use it.

A. Yes ; I might tell you that the younger section of the people will take interest in the matter.

Q. Why is it then that so far they have not done so ?

A. Because the method of trial is not very perfect.

Q. But you have not suggested any change in the method of trials in the towns.

A. The cases can be tried by first-class magistrates, but the trial should be in camera in marital cases. If that safeguard is provided a lot of cases would come to courts.

Q. Do you not think that the punishment that is provided is one of the causes for the cases not coming to light ?

A. I do not think so.

Q. Do you not think that the punishment now provided, namely 10 years R. I. or transportation for life below 12 is very high ? Has your association considered the punishment part of it ?

A. Yes ; we have suggested 2 years in marital cases below 16.

Q. Do you want to make any difference below 12 ?

A. I would not like to make any difference.

Chairman : A tender girl below 12 is too raw for cohabitation and the punishment is therefore very severe at present. The question is whether you would retain that difference, or would you have 2 years uniformly for all cases below 16 ?

A. The maximum should be 2 years and it should be left to the discretion of the court to award whatever punishment it thinks proper. That is the opinion of the League.

Mrs. Nehru : Do you think your association will take up the work of watching these cases and bringing breaches of the law to light ?

A. They can bring complaints before the courts. But with regard to the collecting of evidence and going on with the case it would be a difficult thing for our Association.

Q. Do you think it would be advisable to entrust to the police the investigation of these cases ?

A. I think the village Panchayats and Union Boards can be entrusted with the work.

Q. Would you like a Committee of the members of the Union Board to be appointed for this purpose ?

A. I think Government can appoint a committee from amongst the members, because Government knows which of the members are competent to do this sort of work.

Q. In village you say that they can launch prosecutions as well as try the cases. What would you substitute for them in the towns ?

A. I think some sort of Board can be created from amongst the public.

Q. Do you think Associations such as yours will take up the work ? Can Committees be appointed from amongst the Association members ?

A. I do not think in towns, especially in Bengal, there are many Associations like that.

Q. Do you think special committees can be appointed for the purpose ?

A. Yes.

Q. Do you think public opinion is advanced enough to help these Committees in their work ?

A. Yes.

Q. You want the marriage age to be fixed at 16. Do you think people will agree to it ?

A. We shall have to look to other circumstances. We will have to look to the interests of the girls and their progeny.

Q. Is it possible to bring about a reform of this kind against the entire wish of the people ?

A. Now-a-days amongst the educated classes girls are not generally married before 17 or 18. At least in my family no girl has been married before 18.

Q. What would be the percentage of the educated classes amongst whom girls are not married before 16 or 18 ?

A. The percentage is certainly very small, but we shall have to create public opinion. If there is legislation fixing the age of marriage then I believe these things can be secured.

Mr. Bhargava : Is your experience confined to the Calcutta city or do you know conditions in the villages also ?

A. I speak both for the villages and the town of Calcutta. I personally reside in the villages.

Q. In the villages what is the percentage of marriages taking place above 14 ?

A. From my experience about my own village I think it will be about 12 per cent.

Q. At what age do the rest of the marriages take place ?

A. Usually it is 12 amongst all classes.

Q. What about the Muhammadans ?

A. They also generally marry at about 11 or 12.

Q. Is it amongst the lower class Muhammadans ?

A. In my village of which I am speaking, there are no Muhammadans belonging to higher classes.

Q. How far is your village from Calcutta ?

A. 24 miles. It is near Bandel Station.

Q. Do you think taking the whole of rural Bengal about 12 per cent. have marriages above 14 ?

A. Yes ; generally after 12 it is about 12 per cent.

• Q. What about Calcutta and other big towns in Bengal ?

A. In Calcutta and other big towns marriages seldom take place before 14.

Q. So that may I take it that in Calcutta marriages are late ?

A. In Calcutta the largest number of girls are married at 14.

Q. You say that Union Boards and local Panchayats should be given power to try marital and extra-marital cases. Do you not realise that the result would be that both the accused and the trying authority would be the same ?

A. There will not be much harm in that. I do not like the police to interfere in these cases.

Q. It is an accepted principle that in such cases the investigating authority and the trying authority should be different.

A. In that case the President of the Union Board might be given powers to investigate and a special board might be constituted of the members of the Board for trying the cases.

Q. Do you not think that justice would be tampered with if the President of the Board is the investigating authority and the members of the Board happen to be the trying authorities ?

A. At least the work is done very nicely by these Union Boards.

Q. We are considering the question of trials. The Boards might be doing good work in other directions. Now so far as the Union Boards are concerned, what is their strength ?

A. There are 9 members, 6 elected and 3 nominated.

Q. Are there any amongst them who are conversant with judicial trials ?

A. They have got judicial powers already.

Q. What is the class of power they have got ?

A. Third class powers.

Q. Does not the fact that these Boards are given only third class powers stand in your way ?

A. We would suggest that these Union Boards should be given more powers.

Q. Are there factions in your village ?

A. In my own village there is no faction ; but there are some villages where there are factions.

Q. If there are factions, do you not realise that a stipendiary magistrate would command more confidence ?

A. He may command more confidence, but the investigation can be done by members of the Union Board.

Q. You are for extending the scope of the Union Boards so far as investigation is concerned. Would you be satisfied if a Magistrate tries these cases ?

A. I agree that the investigation might be done by the Union Boards, and the trial conducted by the stipendiary magistrate. However there is one difficulty in this, namely, that the witnesses and others will have to go long distances.

Q. The Magistrate can hold his court in Mufassal areas.

A. Yes; that can be done.

Q. So far as investigation by the members of the Union Board is concerned do you not think that if there is factions spirit in the village it will be a great hardship on the people because members of the Board themselves will have that spirit?

A. I am sure in marital cases nothing of that sort will take place.

Q. May I know whether the members of the Board in your village are orthodox or unorthodox?

A. There are both class of people.

Q. Do you not think that if the majority of the members are orthodox they would have sympathy with an orthodox accused?

A. The same thing will happen even if the stipendiary magistrate happens to be an orthodox man.

Q. If there is no proper investigation, the court becomes helpless if the right sort of evidence is not forthcoming. In investigation we have to take care that the person investigating is impartial.

A. But much also depends upon the trying magistrate.

Q. If the offender belongs to the same party then there will be failure of justice.

A. I do not think so.

Mr. Shah Nawaz : How many members are there in the Social Service League?

A. There are 282 members in the Central Committee and about 400 members in four branches.

Q. Does it contain people belonging to all castes?

A. Yes; it has Brahmins, Muhammadans, Namasudras, depressed classes and others as members.

Q. What will be the number of Brahmins?

A. It may be about 20 per cent.

Q. Have you got women also on the League?

A. We have got about 20 women in the Central Committee. We cannot give details about the branches.

Q. Is it one of the objects of the Association to prevent early marriages?

A. Yes.

Q. In what direction do you want social reforms?

A. We want the abolition of the caste system. We want widow marriages and inter-caste marriages.

Q. Are these objects generally supported by all the members?

A. Yes.

Q. Have you passed any resolution against early marriage and early consummation?

A. Yes. It has fixed the age of marriage of girls at 16 and of boys at 21.

Q. Were there women present at these meetings?

A. Yes.

Q. You want to fix the marriageable age at 16. Do you not think that it would be rather a sudden jump?

A. I do not think so, because considering the after effects of early maternity and the health of the children, we think it should not be less.

Q. Do you think it will be accepted by the orthodox people?

A. Every one will accept it. Sati was abolished and it was accepted by the people.

Q. Is not Sati different from this?

A. In my opinion there is no difference between Sati and this.

Q. Do not women generally favour early marriage and early consummation ?

A. There are lots of women who are against early marriage and early consummation. My own grandmother was against the early marriage of the children in the family.

Q. What about the women in the villages ? Are they indifferent or do they want that there should not be early marriages and early consummation ?

A. They are altogether indifferent. They do not however consider that early marriage and early consummation are necessary.

Q. Do they think that it is a pious duty ?

A. No ; they do not.

Q. Are your members unanimous in favour of this reform ?

A. There may be two or three members who may be personally against it. They are members who do not subscribe to all the programmes of our League.

Q. Is your League doing something for the emancipation of women ?

A. Our chief object is to educate public opinion. We are specially trying to establish girls' schools.

Q. Are you really anxious to help women ?

A. Yes ; we are anxious to raise their status.

Mr. Mudaliar : Are you the Principal of the Sanskrit College ?

A. Yes.

Q. Are all castes of people allowed in the College ?

A. The lower class of Hindus were formerly excluded. Now only the untouchables are not allowed. Other castes are allowed.

Q. Do you make any distinction between castes and castes with regard to the teaching of the books ? Do you teach the Vedas to the Sudras ?

A. Yes. The Sudras have got as much right as any other castes to learn everything.

Q. In the selection of pupils is there any restriction ?

A. Formerly only the Brahmins and Vaidyas were admitted.

Q. Since when has this change come over ?

A. At the time of Iswar Chandra Vidyasagar, in the middle of the last century.

Q. Who are the untouchables here ?

A. The Namiasudras are included amongst the untouchables.

Q. What do the rules say on the question of admission ?

A. All higher class Hindus are allowed.

Q. Now about the religious aspect of the question of marriage, do you think there are religious texts for early consummation and early marriage ?

A. Of course as regards early marriages there are texts, but as regards consummation, there is no text enjoining consummation before puberty.

Q. Do not the texts say that a girl should be married before the age of 10 ?

A. That is so according to the later Dharma Sastras.

Q. What is the text which says that marriage should be pre-puberty ?

A. Yes ; there are texts ; I will send you the texts.

Q. Are the texts believed in by all the castes in this presidency ?

A. Formerly only the Kulin Brahmins of Bengal were marrying their girls after puberty.

Q. Are Kulin Brahmins a separate sect ?

A. No ; they intermarry with other Brahmins. Now Kulinism is dying out because of the spread of education and culture and all people are raising the age of marriage.

Q. In Bengal is early marriage practised amongst Brahmins ?

A. Amongst the educated classes the age of marriage is at present 15 and 16.

Q. Is any attempt made by the Brahmins to conceal puberty ?

A. No.

Q. Is any penalty attached for post-puberty marriage ?

A. Amongst the educated classes it has become the rule.

Q. In what classes does early marriage prevail ?

A. Amongst the uneducated classes and the wholly illiterate classes early marriage is prevalent.

Q. Do you think in Bengal amongst the educated classes whatever be their caste late marriages are the rule ?

A. Yes.

Q. Therefore this religious injunction is not respected ?

A. It is ignored.

Q. Would you also say that amongst the educated classes there are orthodox Brahmins ?

A. Apart from this particular practice of late marriages, there are a number of educated people who are not necessarily liberal in their ideas in other respects.

Q. Do you mean to say that they continue to be orthodox in other respects ?

A. Yes.

Q. What would be their percentage ?

A. About one-third of the total population.

Q. Is cohabitation before puberty common in Bengal ?

A. Wherever there is early marriage I should think it is common.

Q. Does it exist amongst all castes where early marriage exists, or is it confined to low caste people alone ?

A. It generally exists in all castes where early marriage is practised.

Q. What would be the percentage of the people amongst whom this is practised ?

A. I cannot give you the exact percentage, but in all cases where the girl is sent to the husband before puberty, this invariably happens.

Q. When is the girl usually sent to the husband ?

A. Generally soon after marriage. But sometimes if the girl is young she is allowed to remain in her father's house for some time longer.

Q. Is it your suspicion that consummation in these cases takes place before puberty, or do you know definitely that consummation takes place ?

A. They are allowed to live together as husband and wife. That is why I suspect that consummation must take place.

Q. What is the custom due to ? Do Sastras say anything about it ?

A. The Sastras are against it, but it is due to local custom.

Q. Is there any text which says that consummation should only be after puberty ?

A. The Sastras say that the couple should not live as husband and wife before a certain ceremony is performed after puberty. The local practice is against the Sastras.

Q. We were told that some 30 or 40 years ago there was consummation before puberty in Bengal. Am I to understand then that it exists to a large extent even now ?

A. It has not been checked.

Q. I think you might be able to remember the state of the society when the Bill of 1892 was passed. Are we to understand from your evidence that there has been very little improvement in that direction ?

A. Amongst the educated classes the age of marriage has gone up. But amongst the illiterate classes it is continuing as it was.

Q. What do you think is the reason for this state of things? You recognise that in every one of these cases the present law is being violated; and the law cannot be more severe than it is at present with reference to this particular offence. What is the good then of making a further advance if such a state of things continues?

A. The remedy that I would suggest is raising the age of marriage.

Q. What age would you have for marriage?

A. 16.

Q. Do you think that would be a practical age when you have got practices like this around you?

A. There may be some objection at present amongst those classes who have early marriages. But people will gradually become accustomed to it. There may be opposition from the illiterate classes, but they will not be very strong in their objection.

Q. What punishment would you have for the violation of the law of the age of marriage? Would you for instance invalidate the marriage?

A. Marriage once performed should not be invalidated. But I would have punishment.

Q. What is the punishment you would have?

A. I think the punishment provided in Sarda's Bill would be quite sufficient.

Mr. Mitra: Can you tell us from your study of the Vedas whether in the Vedic age early marriage was practised?

A. It is very difficult to say. But there are texts to show that the girls were kept in the father's house upto a big age. I can't give you the texts immediately.

Q. It is said that the shastras are against late marriage, will you kindly send us those texts?

A. (The witness promised to send the texts).

Q. Are there instances in the Puranic age also when girls were married very late in life and late marriage was not socially condemned?

A. It was not condemned. Swayamwar ceremony was performed among the princes and the girls were certainly of a mature age.

Q. They say that these late marriages were performed only among the Kshatriyas and the other castes practised early marriage.

A. There is nothing to show that this was restricted only to the Kshatriyas.

Q. Is it a fact that the marriage law of the shastras is only for the twice born and not the shudras and other castes?

A. There is nothing like that.

Q. Is it a fact that if there is some difference as regards a custom the Vedas have a higher authority than the Smritis?

A. Yes.

Q. If some smriti enjoins early marriage between 8 and 10, will the Vedic authority will be taken into account?

A. The Vedic injunction always supersedes all other Dharm-shastras.

Q. So it will not be correct to say that late marriages are against the Hindu shastras?

A. No.

Q. As a matter of fact even those who follow these smritis which enjoin marriage between 8 and 10 do not marry their girls before 10 in practice?

A. They do not follow the smritis.

Q. Do you think that if the girls are married late there is any ex-communication or social pressure brought to bear?

A. No.

Q. If by legislation the age of marriage is fixed at 14 you don't think there will be any great opposition from any class.

A. There will be no objection from the educated classes, but there will be some objection from the lower classes. However, it will not be very strong.

Q. Is it a fact that all people now feel the evil effects of early marriage but on account of social pressure they are sometimes forced to have recourse to early marriage?

A. Yes.

Q. So that if by legislation the age is raised they will all support it or at any rate they will not very much object to such legislation?

A. People are eager to marry their girls earlier on account of social opinion and if by legislation the age is raised they will be saved of considerable trouble.

Q. They will find it a reasonable excuse if the law is made?

A. They will be rather blessed if such a law is made.

Q. It has been suggested by some that if the marriage age is raised there will be a danger of the girls going wrong. What do you personally think about it?

A. I don't think there is any danger.

Mr. Kanhaiya Lal : Do you consider the texts laying down that marriage should be celebrated before puberty to be mandatory or merely recommendatory?

A. I think it is a mere recommendation.

Q. In other words, do you call them to be Niam Bidhi, Apoorv Bidhi or Parisankhya Bidhi?

A. Parisankhya Bidhi.

Q. What is the difference between the three Bidhies?

A. When there are some natural inclinations to do a thing and it is necessary to stop that by some mandate an Apoorv Bidhi is laid down. This is an inviolable mandate. In the case of a Niam Bidhi there is a natural inducement to do an act but some restrictions are necessary. (The witness promised to send the definition in writing later on.)

Q. The shastras lay down that a wife should be approached during menses. Do you call that a mandatory rule or merely a recommendation?

A. It is a Niam Bidhi.

Q. Is it a mandate or a recommendation?

A. It is a recommendation.

Q. Why do you call it a Niam Bidhi and not a Parisankhya?

A. Because there is a natural inclination in a man to have sexual intercourse. The time is restricted and therefore it is called Niam Bidhi.

Q. Have you read the book called Dharm Depika by Bajaspati Misra who is known to be a commentator and recommends 15 for marriage?

A. I have not read the book.

Q. I suppose you have come across Shushrat, Bagbhatt and Ashtang Hirdoy?

A. Yes.

Q. What age do they recommend?

A. Not less than 16. That is the safe age for maternity.

Q. Do you consider that that is the age that should be fixed for consummation in the interest of the girl and her progeny?

A. Yes.

Q. (To Dvijendranath Dutt) May I know whether you would like these marital cases to be made compoundable so that good relations might be resorted to?

A. Yes.

Q. Would you make them compoundable with the sanction of the court, i.e., in suitable cases only ?

A. Yes.

Q. You want to make these cases non-cognizable. Suppose we require only the higher officials, the Deputy Superintendent or the Circle Inspector to enquire into these cases, would that not be a sufficient safeguard ?

A. If you require them to be investigated by the Circle Inspector or the Deputy Superintendent and none else then you can make them cognizable.

Q. Would you like to have a further safeguard that a magistrate should be required to make a preliminary enquiry before issuing notices or summons so that false and vexatious cases might be eliminated ?

A. I think the trial ought to be started at once.

Q. At present cases below 12 go to the Sessions and above 12 go to the magistrate. Would you recommend that instead of having these two forums we should have one matrimonial court consisting of a magistrate and two non-officials ?

A. That would be better.

Q. Would you prefer this to a system of panchayats that you have recommended ?

A. If a matrimonial court is established the panchayats may be given the power of investigation. They may make a preliminary enquiry and send the case.

Q. Don't you think there is a danger of the evidence being suppressed as these panchayats will be composed of men mainly from the same locality and may be friendly with the guilty man and there is a danger of the evidence disappearing by lapse of time also ?

A. When there are nine persons how can it be suppressed and investigation will be more prompt by the panchayat.

Mr. Bhargava : Do you think all the nine should be given the power of investigation ? Will not everything be topsyturvy ?

A. I don't think so. A committee of 3 or 4 persons may do it.

Mr. Kanhaiya Lal : So that, if we have a matrimonial court we can make these cases cognizable on the condition that the enquiry is to be made only by the Circle Inspector or the Deputy Superintendent ?

A. Yes.

Q. In that case we do not require these panchayats.

A. I think, in villages, it will be desirable that these cases should be enquired into by these Union Boards because they can ascertain facts better than the police as most of them remain present in the marriage ceremony.

Q. If we have a matrimonial court for the trial of these marital cases would you associate the non-officials as assessors or jurors or co-judges so that they may take part both in the assessment of the guilt and the sentence ?

A. I think it will be better to start as assessors and then we can go on gradually to co-judges.

Q. But don't you think we can get very suitable men to sit as judges with the magistrate ?

A. Certainly there are so many honorary magistrates.

Q. We can get retired sub-judges.

A. If such persons are appointed they should be appointed as co-judges.

Q. If we have a law fixing the minimum age of marriage and raising the age of consent would you not like to have a system of registration of marriages, i.e., reports of all marriages being made to a prescribed authority giving the names and ages of the marrying party ? In that case any association or individual can go and examine the register and find out where the law has been infringed or is likely to be infringed.

A. Yes.

Q. Would you place the obligation to report on the marrying party or the guardians or the priest ?

A. Priest as well as the guardian. My marriage is a registered marriage because I married a girl residing in the French territory. There is compulsory registration within 7 days of the date of marriage.

Q. Is there any fee charged ?

A. No. I was present and the priest was present at the time of registration.

Q. If you do not make a report are you liable to punishment ?

A. Yes.

Q. So you would place the obligation both on the marrying party and the priest ?

A. Yes.

Q. Who should be the registering authority ?

A. These village panchayats who are keeping the birth register may also keep the marriage register.

Letter dated Calcutta, 29th December 1928, From Mr. MURALY DHAR BANERJEE.

With reference to your letter No. 1237 A. C. C., dated Camp Benares, the 11th January, 1929, I have the honour to annex below a note containing the texts in favour of pre-puberty marriages to which I referred in my oral evidence with their English Translation. The note is historical and shows the late origin of child marriage and of such texts as support it.

Note on Texts supporting pre-puberty marriages.

TEXT No. 1.

That in the age of the Rig Veda the bride was of mature age is proved by the following two texts of the Rig Veda which were used just before the bride departed from her father's house and on her arrival at the bridegroom's house.

"Pusā tvetō nayatu hastagṛhyāshvinā tvā pra vanatām rathena !

Gṛhān gachchha gṛhapatnī yathāsō vashinī tvam vidatham āvadasi !"

Rig Veda, X. 85.26.

Translation.—Let Pusan take thy hand and hence conduct thee; may the two Aswins on their car transport thee. Go to the house to be the husband's mistress and speak as lady to thy gathered people.

That the above Rik was recited just before the bride's departure from her father's house is proved by the following extract from the commentary of Sāyana.

"Viniyogaḥ : vivahānantara bhāvinī prayāne pusātvetō nayatu ityanayā rathādiyānamārōhayet"

Translation.—Application (of the Rik): At the departure immediately after the marriage with the text "Pusā tvetō nayatu, etc." cause the bride to ascend a chariot of other vehicle.

The above application of the text is also supported by 'Āpastamba gṛhya sūtra' 1.8.1.

"Prayāne upapadyamāne pusā tvetō nayatu hasta gṛhyeti yānam ārōhayet"

If the bride in that age had been an immature girl she could not have been called upon in the above texts to be the husband's mistress and to speak as the mistress of the house immediately after her marriage.

TEXT No. 2.

“Iha priyam prajāyā te samr̥dhyatāmasmin gr̥ho garhapatyāya jagr̥hi !
ena patyā tanvam sam sr̥jasvād̥hā jivri vidathamā vadāmah”

Rig Veda, X. 85 27.

Translation.—Happy be thou and prosper with thy children here : be vigilant to rule thy household in this home.

Closely unite thy body with this man, thy husband ; So shall ye full of years address your company.

Application : That this verse was addressed to the bride on her arrival at the bridegroom's house is proved by the following commentary of Sāyana ;

“Iha priyamityesā vadhvā gṛhapravesini”

Translation.—The text “priyam, etc.” was used when the bride entered the husband's house.

This application is also proved by the following “Āshvalāyana gr̥hya sūtra” 1·8·1.

“Iha priyam prajā te samr̥dhyatām itigr̥ham praveshayet”

The above text clearly shows that the newly wedded bride was called upon to unite herself with her husband *sexually*, which is impossible for an immature girl. The marriage ceremony of the Vedic age having reference to a grown up girl, they preclude the possibility of marriage before puberty in that age.

TEXT No. 3.

In the gr̥hya sūtras we also find the injunction that *youthful* maidens should be married :—

“Lakshanyō varō lakshanavatīm kanyām javiyashīm asapindām asagō-
trām

Aviruddhasamvandhām upayachet”

Āshvalāyana gr̥hya sūtra parisista, 1·22.

Translation.—A bridegroom with auspicious marks should marry a maiden possessing auspicious marks, *youthful*, not a sapinda, not a sagotra, etc.

It is in some of the later gr̥hya sūtras that we find that the practice to marry immature girls is recommended.

TEXT No. 4.

Gōvila gr̥hya sūtra 3·4·6 states “Nagnikātu sresthā”—The immatured girl is to be preferred. It does not however forbid the choice of a maiden not “naked.”

TEXT No. 5.

On the contrary in the Jaimini gr̥hya sūtra it is laid down “Jayāmvindetānagnikām samānajatīyām.....”

Translation.—He should marry a wife of the same caste as himself who is *not* “naked.”

TEXT No. 6.

In the Maitrāyaṇīya gr̥hya sūtra it is stated—“Vivahante bandhumatīm kanyām aspr̥sta maithunam Upajacheta samana vārnām asamāna pravaram yaviāsīm nagnikam srestham.”

Translation.—They marry a maiden having kinsmen who had no intercourse with a man. He should marry a maiden of the same caste but not of the same parāra and *youthful* ; but an undeveloped maiden (“naked”) is best.

Texts No. 4 and 6 show that in the age of the Gr̥hya sūtras the marriage of fully developed girls was in practice though by some authors a preference for undeveloped girls was expressed.

The Gṛhya sūtras are not regarded as Śruti but are classed among the Smṛiti literature and when they are inconsistent with Śruti they must be rejected as without authority.

TEXT No. 7.

In the next stage we find in Gautama Gṛhya sūtra 18.23 the injunction:—
“*Pradānam prāgritoh.*”

Translation.—A maiden should be given away before her puberty and as reason for this it is stated in the next sūtra.

TEXT No. 8.

“*Aprayachchhan dōshī*”

Translation.—The parents not giving away a daughter incur sin (equal to that of killing a brahmin).

And on the basis of this text Vasistha Smṛiti lays down a detailed account of the sin in the following lines:—

“*Yāvantah kanya pītavaḥ sprisanti
Tulyaihsakāmām abhiyāchhamānām
Bhṛunāni tavanti hatāni tābhyām
Mātā pitṛibhyām dharmavādan*”

Thus we see in the latest stage of the Smṛiti literature, in the Sanhitās, the marriage of grown up girls was strongly condemned owing to change of social conditions in India in later days which were the very reverse of those that prevailed in the Vedic Age and not because they have any support of the Vedic Texts but are quite inconsistent with them.

Even in Manu Sanhitā which is the most authoritative of the Sanhitās we have texts supporting marriages after puberty.

TEXT No. 9.

“*Kāman āmaranāt tisthet grhe kanyartumatyapi!
na chai vainām prayachchheta gunahināya karhichit!*”

Translation.—Rather let a daughter remain at her (father's) house after puberty till her death but he should not give her away to any person who is devoid of qualities.

This text emphatically shows that even in the age of the Manu sanhitā keeping of an unmarried daughter after puberty was not regarded as causing any sin.

TEXT No. 10.

“*Trīni varṣāny upasīta kumāryyṛtumati sati!
Ūrdhvam tukalādetasmād vindeta sadṛśam patim!*”

Manu Sanhitā—IX. 90.

Translation.—Three years a maiden should wait after attaining puberty after that period she should choose a suitable husband.

TEXT No. 11.

Of the eight forms of marriage mentioned by Manu (M. S. III. 20 and 21.) Gandharva form of marriage was considered as lawful (Dharmā) for all the four castes (M. S. III. 23.) Therefore, marriage of grown up girls was lawful for all the castes according to Manu.

It is commonly supposed that the investiture with the sacred thread before marriage and the study of the Vedas were meant as sacraments for the males only of the twice born (Dvija) castes and not for their females. But in the Vedic age

and even in later times the girls as well had to undergo the investiture ceremony and to finish the study of the Vedas requiring at least nine years leading a life of celibacy before they could be married.

TEXT No. 12.

“Brahma charjena kanyā yuvanam vindate patim”

Atharva Veda XI. 24.3.18.

Translation.—A maiden after a period of celibacy should obtain a youthful husband.

Marriage according to the Vedas and even the later Smṛiti works was not at all compulsory on a girl. She is according to Hārta either to study the Vedas in a state of celibacy or to lead a married life.

TEXT No. 13.

“Dwividhāḥ stṛiḥ ! Brahmavādīnyah sadyō vadhyashcha !

Tatra brahma vadinīnām upanayanam agnimdhanam vedādhyanam
svagrhe bhikṣhā charyā iti ! Sadyo vadhūnām tūpasthite vivāhe
kathanchit upanayanamātram kṛtvā vivāhah kāryah”

Hārta Smṛiti XXI. 23.

Translation.—Women are of two classes—teachers of theology and quickly married wives. In case of teachers of Theology investiture with the thread, the keeping of the sacred fire, study of the Vedas, and begging of alms at her own house are to be performed. In case of the quickly married wives at the time of their marriage the investiture ceremony should be some how performed before the marriage ceremony.

This shows according to Hārta even in the Kali age girls of the twice born castes have the same privilege to study the scriptures up to any age before they marry or to remain unmarried for life like men without any sin to their parents or to herself.

This view of Hārta is not inconsistent with the text in Manusmṛiti II 6:—
“Vaivāhikō vidhiḥ stṛīnām saṁskāra vaidikah smṛitah Pati sevā quaru vāsō-
griharthō gñiparikriyā” as it applies to the quickly married wives and not to Theological teachers.

**Written Statement, dated 15th August 1928, of Mahamahopadhyaya
ASHUTOSH SASTRI, M.A., Ex-Principal, Sanskrit College, Calcutta.**

1. No dissatisfaction.

2. (2) There is no justification whatsoever in making an advance on the present law relating to the age of consent.

(1) In the case of a married girl's cohabitation with her husband, the age of 14 ought to be reduced to the age of 12 with some advantage to the orthodox Indians.

The reasons and circumstances are briefly stated below :—

(a) With every Hindu, marriage is the most sacred and almost absolutely necessary, sacrament, the most pious object of which is progeniture, particularly, of male children, inasmuch as, all the ancient sacred scriptures of the Hindus strictly and unanimously enjoin that a man must save and benefit his own soul as well as those of his ancestors here and hereafter by begetting a son.

Cf.

“ब्राह्मणो च वै जायमानं स्त्रिभिर्दत्तैः पुत्रैर्वान् जायते, यन्नेन देवेभ्य,
प्रजयापितुं स्वध्यायेन ऋषिभ्यः”

"A man is born under three debts, the debt to the Gods, the debt to the Rishis (Seers) and the debt to his ancestors. He ought to release himself from those debts respectively by studying the sacred lore, by offering sacrifices to the Gods and by begetting a son." (*Vide Vedic Text* quoted by Kulluk Bhatta in his commentary to Verse 45, Chapter 3, Institute of Manu.)

Cf. also the Christian Scripture, "Go and multiply."

(b) The above scriptural injunctions not only inspire in every Hindu a pious desire but also impose upon him an inviolable duty to become, as soon as possible, a progenitor of legitimate children. The same have also affected, determined and shaped from time immemorial, the law of inheritance in every Indian community without any distinction of caste or creed.

Cf. the sacred Text :—

"एष्व्यावहवः पुत्रा एको यदि गयां व्रजेत्"

"The births of many sons are desirable so that at least one may be able to offer Pindas to his ancestors by making a journey to the holy land of Gaya."

(c) A physically well developed and healthy young person being the sole heir of a large fortune or an estate or a trustee of religious and charitable endowments may die without issue, when it would have been possible for him to become a parent at an early age but for the interference to be caused by the proposed restrictions. Cases like this will inevitably cause great social and communal disturbances and painful heartburnings in Indian societies and communities. Thus the raising of the age of consent even above 12 years will certainly cause popular discontent against the ruling powers.

(d) In Indian climates instances of girls between 12 and 13 years and young men in their teens, becoming parents of healthy children and at the same time enjoying long and healthy life are not rare. From time immemorial Indian races including even the Bengalees and the Uriyas, are well known to have enjoyed healthy, vigorous, long and useful lives without any legal age-restrictions upon early consummation of marriage. On the other hand it is distinctly observed that of some of the heretical communities, e.g., the Bra'mos in Bengal, which never allow early marriage paucity of long healthy lives is not an uncommon feature.

3. I am not aware of particular instances of any such crime in our part of the district, 24 Parganas, where I usually reside.

5. The usual age at which girls attain puberty is between 12 and 14.

6. Cohabitation is common soon after puberty.

7. I attribute the practice of early consummation of marriage at puberty to religious injunctions when both the husband and the wife are not in bad health.

Cf. Verse 45, Chapter 3 (Manu).

And Parasara says that by violating the rule a man commits the sin of embryo murder.

(*Vide* quotation of the above text in Kulluka's Commentaries on Verse 45, Chapter III, Ordinances of Manu.)

8. The Garbhadan ceremony is strictly and invariably performed in our part of the country just after the attainment of puberty.

9. Yes.

12. I do not consider early consummation and maternity responsible for premature maternal or infantile mortality nor does it any way affect the intellectual or physical progress of the people.

13. The public opinion in my part of the country is not in favour of an extension of the age of consent in marital cases before and after the Amendment of the law in 1925. Any opinion in favour of the extension of the age of consent or similar legal restrictions seem to be confined only to the so called social reformers who can generally be identified with political agitators.

16. No difficulties or errors in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code can possibly be removed or minimised by raising the age of consent to 14 years or above.

20. I do not consider that any penal legislation fixing a higher age of consent or a minimum age of marriage would be in consonance with public opinion in our part of the country. Such legislative interference, on the other hand, would be repugnant to the Indian public.

21. For the purpose of securing the object in view I would prefer to rely on the progress of social reforms, only by means of education.

Oral Evidence of Mahamahopadhyaya ASHUTOSH SASTRI, M. A., Ex-principal, Sanskrit College, and formerly Senior Professor of Sanskrit, Presidency College, Calcutta.

(Calcutta, 19th December, 1928.)

Chairman : I understand you are against any penal legislation fixing a higher age of consent or fixing a minimum age of marriage ?

A. Yes.

Q. And I understand it is so because you do not find any evil effects of early maternity ?

A. Yes.

Q. In answer to question No. 12 you say, I do not consider early consummation and maternity responsible for premature maternal or infantile mortality. Do you consider that as soon as puberty appears it is a good enough sign to start motherhood ?

A. On the first appearance of puberty it is safe to allow cohabitation.

Q. Of course with its necessary result that a girl may be a mother at an early age. Is it not ?

A. May be.

Q. A girl may get puberty at 11 or 12. Do you think she is fit for consummation then ?

A. In our part of the country the girls attain puberty between 12 and 14. It may be later but not earlier than 12.

Dr. Beadon : In a large number of cases it does occur at 11. Do you think a girl is fit for consummation at that age ?

A. Yes.

Chairman : In answer to question No. 2 you say, in the case of a married girl's cohabitation with her husband, the age of 14 ought to be reduced to the age of 12 with some advantage to the orthodox Indians. I think you are under some misconception. The age at present is 13. Would you like to reduce it to 12 or retain it ?

A. It may be 13 and not earlier than that. I have modified my views in this respect. I have gathered from my experience that it should not be less than 13.

Q. You don't want an advance ?

A. In the case of married girls it may be 13.

Q. If there is medical opinion to the effect that a girl is not fit for motherhood below 16 would you modify your opinion ?

A. What is the authority that is competent to determine that a girl is not fit for motherhood till 16 ?

Q. From the experience of lady doctors and statistics collected it is just possible that the conclusion might be reached that before 16 a girl is not fit to be a mother, would you modify your opinion in that case ?

A. No. I have given my views in 2 (D) with reasons.

Q. In question 21 you say for securing the object in view I would prefer to rely on the progress of social reform. Do you mean to say that the object of raising the age of motherhood is a desirable object ? Do you approve of the fact that a girl had better be a mother after 16 ?

A. I approve of it. Early motherhood is no doubt an evil.

Q. You object to legislation being imposed for this purpose ?

A. Yes.

Q. You say there is no evil resulting either to the mother or the child if a girl becomes a mother at 12 or 13. Why do you want the age to go up ?

A. Instances can be found where girls of 12 or 13 have become mothers and had healthy children and enjoyed long life.

Q. Then you do not approve of the age being 16 ?

A. I do not approve of the restriction that it should not be less than 16. The higher the age the better it is and that view is supported by ancient Ayurvedic authorities.

Q. Then is it desirable to raise that age either by social propaganda or otherwise ?

A. No.

Q. But you say it is better for a girl to become mother later than soon and you say that Ayurvedic authorities support that view. That a girl is not fit to be a mother below 16. Do you accept that ?

A. I do not accept that view in consideration of the present climate and physical condition of Indians. That rule does not hold good now.

Q. You mean to say since Shushrat climate has changed ?

A. Yes.

Q. For the better or for worse ?

A. For the worse.

Q. Have Physical conditions also changed for the better or for worse ?

A. For the worse.

Q. Therefore if in that time 16 was recommended you should go to 20 now. You say since the time of Shushrat conditions have changed. Climate has become worse, physical conditions have become worse ?

A. Social conditions have also changed for the worse.

Q. And social conditions have also changed. Therefore you want further remedy for that.

A. But late marriages would lead to demoralization of society.

Q. Late marriages beyond what age ?

A. 13 or 14 for girls and 18 for boys.

Q. Upto 14 and 18 it will not lead to demoralization ?

A. No.

Q. You are not afraid of any demoralizing consequences if the marriage age for girls is fixed at 13 or 14 and for boys at 18 ?

A. It is not likely that such consequences will result.

Q. Do you think that the age being raised to 13 in 1925 has caused any discontent?

A. In my opinion it has not caused any material discontent.

Q. Supposing the age is raised to 14, do you think there will be discontent?

A. May be.

Q. In answer to question No. 7 you say, I attribute the practice of early consummation of marriage at puberty to religious injunctions. Are you also aware of the fact that there is a prayaschit given for a man who does not go to his wife during 'ritu'?

A. No.

Q. Do you know that if a girl is not married before puberty a prayaschit can be performed and the girl purified?

A. There are prayaschits but if any man wilfully violates the rule then I think the prayaschit won't remove the sin.

Q. There are different views expressed. There is a certain class which believes that there is a prayaschit even for the wilful commission of a sin and there are others who do not have that belief?

A. When Indra committed a sin by killing a Brahmin he gave some cows to Brahmins. On the authority of that some sages allow a prayaschit even in the case of wilful commission of a sin.

Q. Does not Manu himself say that if consciously or unconsciously a sin is committed it is expiated by a prayaschit.

A. Whenever a sin is committed intentionally there may be a prayaschit but association of pious men with him is not allowed. This is according to what Ragunandan and Shilopani have said in a book on Prayaschits.

Q. Even after the prayaschit the man is an Apanteya?

A. When there is some wilful commission of a sin a prayaschit is laid down. A penitent man should perform a prayaschit and that may absolve the sinner but association with such a sinner in society is disallowed.

Mrs. Nehru: Will you please explain what you exactly mean by saying in answer 2(b) the same have also affected, determined and shaped from time immemorial, the law of inheritance in every Indian community without any distinction of caste or creed?

A. The man who offers the Pindas gets the inheritance.

Q. But that does not apply to all Indian communities?

A. I mean the Hindu community.

Q. Is it a fact that in Bengal post-puberty marriage takes place amongst very large sections of people?

A. I am not aware of any such thing. Post-puberty marriage does not take place amongst the Brahmins. However liberal may be the views of educated orthodox Hindus in Bengal and the higher castes, they are all very anxious to give their daughters in marriage before the attainment of puberty.

Q. As a fact does post-puberty marriage take place?

A. It might take place but they don't divulge it out.

Q. Does there exist in Bengal a class called the "educated classes"? And do not post-puberty marriages take place amongst them?

A. At least a great many of the people are educated, and they have strictly pre-puberty marriages and those who violate this rule, they don't divulge the fact.

Mr. Bhargava: Then am I to understand that if there is a marriage law whereby girls below 14 and boys below 18 are not allowed to marry, you will be in favour of such a law?

A. I shall be opposed to it. I once again say that the age of marriage for a girl should be 13 and not less than 16 for boys.

Q. Anything more than 13 you will oppose. Is that so ?

A. Under the law it will be not less than 13.

Q. I understand that in Bengal the patriarchal form is observed and so if there is a young man he can marry a girl above the age of 12 also ?

A. Yes.

Q. When you refer to page 3 Section (c), you will see that it deals with cases of young men who want to procreate children. Do you think they can procreate children from girls below the age of 12 also ?

A. No.

Q. According to the Shastras do not the marriage and the Garbhadan ceremony take place as part and parcel of the same ceremony, i.e., on the fourth day the Garbhadan ceremony is performed ?

A. After the third and before the 16th day this is performed.

Chairman : In other words is not the *Chaturthi karma* performed on the fourth day of the marriage ?

A. Yes.

Q. Does *Chaturthi karma* mean that Garbhadan should be performed on the fourth day of the marriage ?

A. If she attains puberty then Garbhadan must be performed.

Q. She may or she may not have attained puberty. We are not talking of puberty. We are talking of the necessity of having to effect the union on the fourth day after marriage in accordance with *Chaturthi karma* ceremony. What is your opinion on this point ?

A. They may be united.

Q. Does *Chaturthi karma* mean that all the mantras should be recited at the time of sexual union. Do you understand what *Chaturthi karma* means ?

A. At least in our part of the country it is not so.

Q. I want to know whether it happened in olden days during the Vedic period ?

A. I don't know. It does not mean necessarily that the husband must cohabit on that day.

Mr. Shah Nawaz : Do you think that every Hindu girl must be married before she arrives at the age of puberty ?

A. Yes.

Q. Is it on account of religious injunctions that the girls are married before puberty ?

A. Yes.

Q. Do you know what is the object of marriage ?

A. It is to get a son or a girl.

Q. You say that the aim of life is to have children. Is it the aim of the wife as well ?

A. Yes.

Q. Should it be the aim of every woman to have children ?

A. Yes.

Q. Why don't you allow widows to have children if this is the aim ?

A. I cannot agree with you.

Q. Do you allow widow remarriage ?

A. I don't allow widow remarriage. If a girl becomes a widow then the widow cannot have children. A widow must pass her life by living upon leaves and fruits and must not take the name of another husband.

Q. Do you really base your views on the Shastras ?

A. Yes.

Mr. Mudaliyar : In your Sanskrit College what castes are admitted ?

A. Only Hindus of social respectability are admitted.

Q. Who tests the question of social respectability ?

A. The Principal tests it.

Q. Supposing the Principal fails to properly test the social respectability, what is the next step ?

A. The higher authorities will see to that.

Q. Are any untouchables allowed in your College ?

A. Certainly not.

Q. Are any Sudras allowed ?

A. The highest caste of Sudras are allowed.

Q. Who are the highest caste of Sudras ?

A. This is a very delicate point to answer. Those Sudras in whose religious ceremonies the Brahmins officiate as priests and whose waters may be taken by high castes such as Kayasthas, ohhagi, kashari (mercantile classes) and those whose waters can be taken by the high caste Brahmins are admitted into the college. Formerly, only the Brahmins and Vaidyas and not even the Kayasthas were admitted but now Hindus of social respectability are admitted.

Q. What I wanted to ask you is this. Amongst those castes you admit in the Sanskrit college, is early marriage practised or do those castes also practice late marriages after puberty ?

A. This generalization is unanswerable.

Q. Did you not say that you are prepared to have a marriage law at 13 by legislation ?

A. 13 or 14 is the proper age. If any parent gives his daughter in marriage, according to the religious injunction, after the attainment of the 8th year and before the attainment of the 12th year, that is not forbidden by our religious injunction. Personally I don't encourage it. In view of the social and economic conditions, I am not for early marriages but they are sanctioned by our religion and if anybody does it I don't want that he should be interfered with by legislation.

Mr. Mitra : May I take it that you are following the religious injunctions about marriage and consummation strictly ?

A. Very strictly.

Q. Do not the texts say that the marriage is preferable between the ages of 8 to 10 ?

A. There are texts recommending marriages of girls from 8 to 10 and there are texts which condemn marriages even after 10 or 12 but those texts are not accepted in their strict sense. Some injunctions are mandatory and others are recommendatory.

Q. Is the injunction relating to pre-puberty marriage mandatory or recommendatory ?

A. Recommendatory.

Q. Is it not binding on the Hindus ?

A. No.

Q. So do you mean to say that a man can give his daughter at 14 or 15 ?

A. After the attainment of puberty it is forbidden.

Q. Will you quote the Sloka when it becomes mandatory ?

A. I shall send the Sloka to you.

Q. To what class of Brahmin you belong ?

A. I belong to Vaidya caste.

Q. What is the population of your community ?

Q. I cannot give you the exact figure. My community is a very small community.

Q. Do you know the Kulin Brahmins in Bengal ?

A. Yes.

Q. Don't you know for centuries together they used to keep their girls unmarried when they were even 25 or 30 ?

A. Yes.

Q. Are they ex-communicated for this ?

A. No. They rely upon another text of Manu.

Q. What is that text ?

A. Even after puberty a girl may live with her father unmarried till she dies but that the father ought not to give her in marriage to an unqualified husband.

Q. Do you accept it as a good and reliable text ?

A. Certainly.

Q. Do you think that it is binding on all the Hindus ?

A. No. Only in the absence of a properly qualified husband such marriages are allowable otherwise they are not.

Q. So it is not proved by past customs that girls were married late ?

A. It is only so amongst the Kulins.

Q. Is there anything in the Shastras to say that it is only applicable to Brahmins ?

A. Certainly.

Q. Did the Shastras or the orthodox people disapprove this custom ? (Or the orthodox people disapprove this custom ?)

A. They don't disapprove it and they don't recommend it.

Q. Can you tell us when Sakuntala, Savitri and Draupadi were married ?

A. There is no mention of their ages.

Q. Do you consider yourself as an orthodox Brahmin ?

A. Yes.

Q. At what age did you marry your daughter ?

A. Not earlier than 13 or 14.

Q. Do you think that marriages at 13 or 14, according to the strict sense of the Shastras, are advocated ?

A. No, they are not advocated.

Q. In fact do many of the Brahmins in Bengal follow your example ?

A. They rely upon the text of Manu, that in the absence of any properly qualified husband the daughter should be kept in her father's house unmarried but should not be given to a bad husband.

Q. Do you remember any text in Hindu Shastras which enjoins that consummation should not take place before puberty ?

A. They recommend.

Q. Are the recommendations to be followed by the orthodox people ?

A. Even before the attainment of puberty the husband can cohabit with his wife and this is not forbidden.

Q. Do you mean to say that consummation is not discouraged even before the attainment of puberty by the Shastras ?

A. Yes. Consummation may be allowed even before the attainment of puberty and by such consummation the husband is not guilty of any great sin. If the husband refrains from cohabitating with the girl before the attainment of puberty that would be a very good thing. It is a moral injunction and not a legal compulsion.

Q. Do you remember the exact text where it is said that consummation is allowed even before the attainment of puberty ?

A. There is no forbidding of consummation if the girl is well developed.

Q. Is it not a fact that in practice in Bengal there are large numbers of cases and in fact in about 90 per cent consummation takes place before puberty amongst those people where early marriage is practised ?

A. There may be cases.

Q. There may be cases is another thing. You know that soon after marriage girls are sent to their husbands' houses, but there is no such custom in Southern India. In Southern India they marry their girls at an early age but they never send the girls to their husbands' houses before the attainment of puberty. Do you accept my statement that in Bengal the girls are sent soon after marriage to their husbands' houses ?

A. Yes.

Mr. Mudaliyar : Are they given facilities to cohabit ?

A. They are sent to their husbands' houses.

Mr. Mitra : Did you not feel when you got your daughter married at 13, that you were going against the strict injunctions of the Shastras ?

A. I strictly observed the Shastras.

Q. What is the difference between Garbhadan and Rithu Samskara ?

A. Garbhadan is a ceremony and Rithu Samskara also is a ceremony.

Q. What is the difference between these two ?

A. After the attainment of puberty of a girl, for her purification certain mantras are observed and that is called Rithu Samskara.

Q. Is it not a fact that if an auspicious day is not available, they only have the Rithu Samskara postponing the Garbhadan ceremony to a later date ?

A. Yes.

Q. So there is provision that if the husband is not available it is not binding to have consummation on the first menses because by Rithu Samskara that may be avoided. Is that not so ?

A. If the girl attains her age in the presence of the husband and if he does not cohabit then it is a sin. It is against the injunction.

Pandit Kanhaiya Lal : Is the text requiring that a man should approach his wife within 16 days after the first menses, recommendatory ?

A. That is mandatory. The principle is this. If he refrains from doing this, he is guilty of committing a murder.

Q. Are these texts relating to marriage before puberty *artha vadh* or *niyama vidhi* ?

A. *Niyama vidhi*.

Q. What is the difference between *artha vadh* and *niyama vidhi* ?

A. *Artha vadh* is mere recommendation. By *niyama vidhi* I mean there is option to this or that and that is restricted. The recommendations of the Shastras for marriage of girls even after puberty is a laudatory sentence and not a mandatory sentence the purport of which is simply to recommend a properly qualified husbands. This is *apath dharma*.

Oral Evidence of Mrs. LATIKA BASU, Secretary, Chittaranjan Seva Sadan, 148, Russa Road, (South Calcutta).

(Calcutta, 19th December 1928.)

Chairman : Are you the Secretary of the Chittaranjan Seva Sadan, Calcutta ?

A. Yes.

Q. How long has this institution been in existence ?

A. Since the last 2½ years it is in existence.

Q. What does this Seva Sadan do ?

A. It is a maternity hospital and during the last year they have started the public health section of which I am in charge.

Dr. Beadon : Are you in charge of the maternity hospital ?

A. I am not connected with the maternity hospital but I go off and on.

Q. Do you know anything about the maternity cases coming to this hospital?

A. I know a bit of it.

Q. What class of people do generally come there ?

A. All classes of people come there but mostly Badralog people come there.

Q. Do you find amongst them early maternity or late maternity ?

A. Usually I find early maternity among them.

Q. What are their ages ?

A. 14, 15, 16 and 17.

Q. What is the lowest age you found ?

A. One case was aged 12. I found that before menstruation she had conceived.

Q. What about the labour in that case ?

A. I don't know much about it but there was miscarriage.

Q. Have you seen any other cases besides this ?

A. I have seen some other cases which usually end in abortions.

Q. Have you seen the children of these young mothers ?

A. The children are very weak.

Q. What is the object of your Association ?

A. We are training nurses and midwives with a view to send them to villages and open maternity hospitals and child welfare centres. In the various wards we give medical lantern lectures and train midwives.

Q. Have you not come across with other maternity cases or babies besides those that you have mentioned ?

A. We have over a 100 out-door patients.

Q. Have you noticed any very young mothers amongst these people ?

A. I have noticed girls coming with babies at the age of 14.

Q. Have you noticed the condition of these children when compared with the children of older mothers ?

A. I asked the matron and she said that the children of these young mothers are much weaker and smaller.

Mr. Bhargava : Have you occasion to talk to orthodox ladies ?

A. Yes.

Q. Are they generally in favour of late marriages ?

A. In the towns, the ladies want to marry their girls as late as possible.

Mr. Mudaliyar : May I take it that you are in favour of fixing an age for marriage by legislation ?

A. Yes.

Q. What minimum age would you recommend for marriage ?

A. 16 but I would prefer 18.

Q. What age would you recommend for the age of consent ?

A. It cannot be less than the age of marriage.

Q. Supposing the marriage law is violated, what punishment would you suggest ?

A. I have not thought exactly what the punishment should be.

Q. Are you in favour of a pure fine if the marriage law is violated ?

A. That will be quite useless.

Q. In case of violation of the marriage law, would you punish the parents who bring about the marriage ?

A. Yes.

Q. Would you also punish the priests who officiated in these marriages ?

A. Yes.

Q. Supposing we have a lower age for marriage and a higher age of consent say 14 for marriage and 16 for consent and supposing the age of consent law is violated, then would you punish the parents only or would you punish only the boy.

A. Not the parents.

Q. Would you punish the boy if he is below 18 and the girl is 13 or 14 ?

A. Then of course the parents are responsible. If the boy is above 18, then you should punish the boy.

Q. Should the boys in all such cases be punished with fine or imprisonment ?

A. Imprisonment.

Mr. Mitra : You are also in charge of some educational institution ?

A. I am Principal of Victoria High School.

Q. Have you had occasion to talk with a large number of ladies in Calcutta ?

A. Yes.

Q. I think you are in a position to say that ladies even amongst orthodox classes will favour legislation to fix an age for marriage ?

A. In Calcutta the majority of ladies are for fixing a higher age of marriage.

Q. Even orthodox ladies ?

A. Yes.

Q. Is it not a fact that among the educated classes in Calcutta marriages now do take place at a late age ?

A. Yes.

Q. The witness preceding you said that the orthodox classes generally practise early marriage. Is it a fact ?

A. Among the educated classes girls are married at 15 or 16.

Written Statement, dated the 8th August 1928, of the Hon'ble Mr. Justice S. K. GHOSE, I.C.S., Offg. Judge, High Court, Calcutta.

1. No dissatisfaction is apparent from litigation. But I believe the present agitation is good evidence of dissatisfaction among the thinking public.

2. Since law is the expression of the life of the people it follows that law must follow the line of progress.

3. Such crimes are frequent, but there is no special frequency. The amendment of the law has made no change as regards ordinary cases of rape or seduction.

An Act like the Calcutta suppression of Immoral Traffic Act (XIII of 1923) is more effective. I would recommend it for large municipal areas.

4. There is very little evidence on this point. Such cases between husband and wife do not come to Court.

5. Probably 12.

6. See Question 4.

7. I do not attribute it to religious injunction. Now-a-days it is social custom plus physical necessity.

8. Not known.
9. The ideal state would be 5 years after puberty.
10. See Question 9.
11. No such cases in Court. But one meets with such cases frequently in society.
12. This is the accepted view and there is nothing to show that it is wrong.
13. I cannot say that there has been development since the Amendment of 1925. But the development has always been towards the raising of the marriageable age which is indirectly the age of consent.
14. Women generally favour it more than men.
15. Offences under Sections 375 and 376, Indian Penal Code involving question of age are rare. And I anticipate there will be difficulty in proving age. The fine distinction that is sought to be drawn between the ages of 12 and 13 is useless for the purposes of judicial proof.
The only safe test is registration of birth.
16. I do not see how raising the age of consent would avoid the difficulty of proving age.
17. The present differentiation is good enough.
18. See Question 17.
19. No.
20. Legislation fixing the minimum age of marriage would be more effective. See for instance the Special Marriage Act III of 1872.
21. I would rely on the progress of social reform.

Oral Evidence of Mr. S. K. GHOSE, I.C.S., District and Sessions Judge.

(Calcutta, 19th December 1928.)

Chairman : In what Districts have you been working as Magistrate and as Government official.

A. In various Districts—practically the whole of Bengal and a part of Bihar.

Q. How long have you been in service ?

A. Since 1903. First in administrative capacity and as a judge since 1911.

Q. In all these Districts where you have been, have you any reason to believe that the law of the age of consent at 13 is broken ?

A. I have reason to believe that in some cases the age of consent law is broken.

Q. You say that fixing the age of marriage would be more effective ?

A. The age of consent so far as it relates to Section 375, Indian Penal Code, has a very indirect effect on marriage. People who bring about marriage practically have very little knowledge of criminal law but if you fix the age of marriage then that will act directly on the custom.

Q. Are you of opinion that the present Age of Consent Act even if it is raised to 14 will be a dead letter ?

A. I would not say that it would be dead letter ; I say that it has certainly an indirect effect on the age of marriage.

Q. Have you any reason to think that if we raise it to 14 or 15 there will be many more cases coming to court simply by raising the age ?

A. I do not expect that.

Q. Have you found any difficulty in the birth registration system ?

A. There are more defects in the mofasil than in the municipal areas. Municipalities are more reliable.

Q. Do you think it is possible to assure the correct report of births and deaths ?

A. It is possible to a certain extent but not very much. Certain amount of time must elapse.

Q. If it is made compulsory on the headman of the village and also on the parents, is it possible to have a more reliable record ?

A. Yes.

I would like to make a general statement. My general views are these.—So far as the age of consent legally is concerned I put it into two classes, one outside marriage and second within marriage. So far as outside marriage is concerned it is only a question of suppressing immorality and therefore you would be justified in recommending an increase of the age of consent outside marriage as far as practicable. If you look at the existing law you find that beginning with offences of kidnapping you go on to offences like procuration for immoral traffic, buying and selling of minor girls. There you find that the age has been fixed at 18. Even in Calcutta in the Calcutta Act of 1923 you find that the police have got powers to remove girls below 16. Therefore I say that if it is penal to procure a girl who is below 18 why should it not be penal to have sexual intercourse with a girl below 18 even if she consents. So I see there is some justification in the existing state of the law to have the age of consent in outside marriage fixed at 18.

As regards within marriage I would hesitate to fix it above 14. I think if you fix it above 14 you would be going too fast having regard the social conditions, etc. So that as a practical question I recommend that outside marriage the age of consent should be 18 and in marriage it should be fixed at 14. At present there is a fine distinction between 12 and 13 to which I have referred but in practice it is very difficult to distinguish.

Q. Would you have the same minimum age for marriage ?

A. That is a difficult question ; it does not directly arise under your purview. I should certainly like to see, if you are going to have a marriage law, the same age fixed as for the age of consent within marriage, i.e., 14.

Dr. Beadon : In answer to question No. 11 you say that you know of girls who have been injured by sexual intercourse. Can you give us any instances within your personal knowledge within the last 2 years.

A. I have come across immature girls giving birth to children suffering.

Q. Would you mind giving us details of one or two cases ?

A. I know of one girl who is now 18 and she has two children. I think her health has been injured.

Q. Some witnesses have told us that it is not due to first childbirth but it is due to frequency of pregnancies that a girl suffers. Would you give us any instance of a girl whose health has suffered as a result of first childbirth. Has any such case come in your observation ?

A. I know one case of a girl aged about 13. She was not strong to begin with and when gave birth to a child she visibly suffered.

Q. Was the child born alive ?

A. Yes.

Q. Is the child all right ?

A. But it is not very strong.

Q. Do you think it is a single case or do you think there are many cases like that ?

A. There are many cases like that. At least one case comes to my mind of a woman giving birth to a child at the age of 10 and the woman lived to a good old age and the child is living.

Q. What caste of girl was she ?

A. She was a respectable Kaistha girl.

Q. Do you see many cases of men of about 35 or 40 marrying girls of 13 ?

A. I have heard of such cases but I cannot recall any now.

Mrs. Nehru : Can you give us any details of extra marital cases which you may have tried in your judicial capacity ?

A. Cases under Section 376, Indian Penal Code, go to the Court of Sessions Judge. Generally cases of cohabitation against the will are very rare. We have to deal with questions of consent.

Q. Have you dealt with any case of seduction ?

A. Many.

Q. Do you think they are frequent here ?

A. Not unusually frequent but they are frequent.

Q. What was generally the age of the girl ?

A. The ages varied. I should say it varied from 12 to about 22.

Q. What generally was the class of girls seduced ?

A. They were Hindus and Mohamedans.

Q. Is there any belief that more cases are happening in one community than in the other ?

A. I should not say that. It differs in Districts. In Mohamedan Districts you get more Mohamedan cases and in Hindu Districts you get Hindus cases of certain classes.

Q. Among what class of girls ?

A. They are not always respectable.

Q. Have you come across any cases in which respectable girls were seduced ?

A. I have come across a few respectable girls. Generally they were from the low classes. Not very low but land-owning classes and in labouring classes.

Q. Did you find the object of seduction was sale or personal use ?

A. Personal use.

Q. There is no sale of girls here ?

A. Not in the mofasil.

Q. May I know what is your reason for fixing the age at 14 in marital cases ?

A. Because I do not want to go too fast. I think if you put it higher than 14 you will be going too fast.

Q. By too fast you mean the people will resent it or that it will be impracticable ?

A. For both reasons. I think it is a mistake to legislate ahead of the social progress.

Q. What is it exactly that you apprehend—Do you think it will be difficult to enforce this law or that people will resent it ?

A. I expect there will be certain amount of resentment. As a matter of fact there was a good deal of resentment when the age was fixed at 12. There was considerable agitation and even now there is a good deal of prejudice against raising the age of marriage or indirectly the age of consent too high. Religious beliefs are put forward as an excuse.

Q. Religious beliefs are brought forward as far as marriage legislation goes ; they do not apply to age of consent ?

A. No.

Mr. Bhargava : What is the usual age of marriage among the educated and higher classes ?

A. I should say from 12 to 14.

Q. If the age of consummation is fixed at 14 you think it will be generally acceptable to the people ?

A. There will be a certain amount of resentment but still having regard to the good sense of the people I think it will be safe to put it at 14.

Q. Do you believe that uneducated people will accept it ?

A. I should not say they will all accept it. Whenever you make a change in the law there is always a certain amount of opposition but as the progress is paced in accordance with the age of marriage I think it will be safe.

Q. Will orthodox people create the same amount of agitation if you raise it to 14 or 15 ?

A. I think there will be a certain amount of agitation.

Q. As regards the unorthodox people will they probably accept 15 ?

A. Yes.

Q. Between 14 and 15 if you make it 15 the amount of agitation will be the same ?

A. The higher you raise the age there will be still more agitation.

Q. So far as fixing the age of consummation is concerned, is it your idea that the injury to the girl is to be avoided ?

A. That is the first thing.

Q. But we were told that injury to the girl cannot be avoided if you fix it at 14. It will much better be avoided if the age is 15. Would you agree to fixing the consummation age at 15 ?

A. We have to take into consideration various factors. A good deal depends on the age of puberty. A girl as soon as she attains puberty is not fit to become a mother. On the other hand if you fix it very much later than the age of puberty you will probably be legislating too far ahead. So I say having regard to all these conditions it would be safe to have 14.

Q. As regards marriage they will say we want to marry early but as regards consummation there is no Shastric authority. If you fix the age at 15 there will not be much opposition.

A. Between consummation and marriage ceremonies one year generally elapses but there will be a certain amount of opposition even if you fix it at 14 and if you go higher the opposition will increase.

Q. Is the practice of early consummation due to religious injunction ?

A. I think it is a social custom and a physical necessity.

Q. But desire for sexual intercourse does not come in any girl before she is 14.

A. Not invariably so.

Q. Is it so great a desire that you would put it to physical necessity ?

A. I do not say that, it may also be due to social custom.

Q. But there must be a certain amount of physical necessity. I want to know amongst Hindus have the girls any desire to become wives before the age of 14 or 15 ?

A. That depends on that particular girl. Some girls I suppose do have the desire pretty early and some have it late.

Q. I want to know what you mean by saying that early consummation is necessary as a physical necessity. Do you mean sexual urge requires early consummation ?

A. Yes, I mean sexual desire.

Q. In reply to Question 15 you say that a fine distinction is sought to be made between 12 and 13 but there is difficulty for the purpose of proof. If the age of consummation is raised to 15 then you will agree with me that so far as the proof of age is concerned it will be easy of proof ?

A. I was thinking of the distinction between 12 and 13.

Mr. Shah Nawaz : What is the percentage of pre-puberty marriages among the Hindus and the Mohamedans in Bengal ?

A. It is difficult to say exactly but it may be between 50 per cent. and 75 per cent.

Q. You say that we should fix the minimum age of marriage at 14 by legislation. Would you render the marriage invalid if it is performed before 14?

A. All that I say is that if you fix the age of consent within marriage that affects directly on the age of marriage. But at the same time it will be difficult to fix the age of marriage. If you say that a girl cannot be married legally unless she is 14 all sorts of difficulties will arise as regards proof of age.

Q. But the point is not rendering marriage invalid but of penalising it. What is your opinion about that? Would that be acceptable?

A. There would be difficulty of proof of age. You can make it invalid or you can penalise it but penalising is worse.

Q. Can we make it effective by the production of a birth certificate? We say that Mohamedans and Hindus should report the names of the girls and have them entered in the birth register and it should be the duty of every man to do it and get a certificate. Would it be better to fix the minimum age of marriage?

A. Yes, in these circumstances if you lay down a certain mode of proof.

Q. Don't you think that fixing the minimum age of marriage would be more effective than the age of consent?

A. Certainly.

Q. And in that case you will punish the parents and the priest.

A. Yes.

Q. You say women generally favour it more than men. Do you refer to educated women or women in general?

A. I refer to educated women.

Q. Can you give us the opinion generally of women?

A. It is the same.

Q. You say that the age of consent should be really 5 years after puberty. Then you mean the age of consent should be fixed at 16 or 17?

A. I put the age of puberty at 12 but having regard to other circumstances I think it should be 14.

Q. Suppose we fix 14 for marriage and consummation now, would you go up to 16 or 17 gradually?

A. It should be done gradually but I do not recommend it at once.

Q. Then with regard to marital cases would you have the trial in camera?

A. Not necessarily.

Q. Would you let the punishment remain as it is now with regard to marital and extra marital cases?

A. Yes.

Q. Would you reduce the punishment in marital cases?

A. The maximum is fixed at 2 years and the rest may be left to the discretion of the judge.

Q. I suppose you leave the cases cognizable below 12 and non-cognizable above 12?

A. I do not think it makes much difference. You make it cognizable in all cases.

Q. Would you make the cases compoundable?

A. No.

Q. As a Hindu gentleman of position would you say that a girl should have a voice in the selection of her husband?

A. Certainly, if that is possible.

Mr. Mitra: Can you tell us from your experience if there is any orthodox class in Bengal who would think the fixing of the marriage age for girls as infringement of religious injunctions?

A. There will be objection in certain quarters.

Q. Do these orthodox people seriously believe that it will be against their religious beliefs ?

A. Yes.

Q. Do you recommend that there should be some exemptions made in hard cases if the marriage law is passed ?

A. I think it would be better to have exemptions made.

Q. From your experience can you tell us that in those communities where early marriages are practised, consummation takes place immediately after marriage or would they wait till puberty is attained ?

A. Early marriages generally bring on early conception.

Q. Can you suggest any means by which these cases may come up to court. Will it help if the severity of sentence is reduced ?

A. I do not think the severity of sentence has any inducement to bring these cases to light.

Q. And if the trials are held in camera ?

A. Trial can always be held in camera at the discretion of the court.

Q. So you do not think there is any great chance of marital cases coming to court ?

A. No, I do not think so.

Pandit Kanhaiya Lal : You say that exemptions might be granted from the law fixing the minimum age of marriage. Who should be the authority which should grant exemptions ?

A. That is a matter which I have not thought out but it must be all laid down in the Act itself.

Q. To what class of cases would you grant exemption ?

A. In really hard cases.

Q. In what class of cases you would refuse these exemptions ?

A. I have not thought over it.

Q. Would you like the marital and non-marital offences to be separated ? One is a heinous offence against society and another is an offence against a particular girl ?

A. Yes. They should be separate in punishment.

Q. Would you change the nomenclature of offence committed by a man on his wife. Is the word rape objectionable ?

A. It is only a technical objection but the whole question is of sentence.

Q. Would you like that these cases may be made compoundable in order to restore good relations between the husband and the wife ?

A. If you make it compoundable you will find that every case that comes at all to court will be compounded because after all the husband can always coerce the wife. If the husband does not do it, his relations will do it.

Q. But the husband may get annoyed with his wife and may discard her for ever and take on another girl ; the life of the girl will be ruined. Would you not give an opportunity of compounding the offence ?

A. I think if you make it compoundable it will be dangerous but it is always open to the court to give a nominal sentence.

Q. If it is not made compoundable the trial and the enquiry will be completed but in the case of compounding there will be no trial. Don't you think in case of that character the court may be empowered to grant permission for compounding ?

A. In actual practice the case may be finished in two minutes if he has to pass a nominal sentence.

Q. It may take 2 hours.

A. But the sort of cases that you are thinking of are those which the parties do not want to contest and if there is a nominal sentence there will be no hardship. If you make it compoundable there is that danger that as a matter of course cases will be compounded.

Q. I am thinking of compounding with the sanction of the court ? Do you think the court will grant compounding in all cases ?

A. I do not think the court will resist a case of that kind being compounded.

Q. But in deserving cases it is always open to the court to pass a nominal sentence which may mean warning.

A. If you make the cases compoundable with the permission of the court then probably the court will give permission as a matter of course.

Q. You have said that you would prefer the marital cases should be cognizable. Do you mean that in all the marital cases only higher officers of the Police like Superintendent of Police or Inspector of Police should be asked to enquire ?

A. It will be better to have responsible officers to enquire into these cases.

Q. Would you further recommend that in these marital cases the magistrate may be asked to make a preliminary enquiry before he starts the case ?

A. If it is cognisable the case can go on.

Q. The procedure is that at present cases under 12 go to the Sessions Judge and the cases above are tried by first class magistrates. Would it be desirable instead of having these two divisions, to have matrimonial court with 2 non-officials as co-judges ?

A. No. In my experience I have not come across any case of rape by husband on wife.

Q. But we have got cases reported. They are not numerous but cases do occur and for the trial of these cases would it not be better to have matrimonial courts so as to inspire better confidence in the public and expedite their disposal ?

A. That depends on the sort of matrimonial courts.

Q. It may be constituted of one official and two non-officials of the right type. There will be one matrimonial court in each District. Matrimonial court will be concerned with marital cases and there will be no publicity given though judgment can be published.

A. These are domestic matters and it would be an interference in private matters.

Q. Would you recommend it ?

A. There is no objection to having matrimonial courts.

Q. Another suggestion has been made to us that if we have a law of marriage or law of consent the marriages should be registered that is to say reports of marriages be made to a prescribed authority giving the names of the marrying parties and ages so that associations and authorities interested may be able to find out whether the law has been infringed or is likely to be infringed ?

A. That sort of law will be difficult to work.

Q. Marriages are fewer than births and deaths and if we can maintain registers of births and deaths would it be more difficult to maintain registers of marriages ?

A. But have you got a general system of registration of births and deaths.

Q. Yes, it is throughout India. Government wants vital statistics. If we have got this registration of marriages would it be a help ?

A. Yes.

Q. Whom would you give the authority to maintain these records of marriages ?

A. You have got the sub-registrars in the mofassils and in the villages the village headman or the Union Boards. Would you entrust this work to the Municipalities or Union Boards in rural areas or to any executive authority such as Sub-inspector of Police or Tahsildar ?

A. I would give it to the Police.

Q. Would you employ the same agency which is now employed for the registration of births and deaths for the purpose of maintaining marriages records also ?

A. Yes.

Q. Are you aware that in Bengal all marriages of Europeans and Christians are reported to the Registrar General ?

A. Yes.

Q. Would you recommend that all these marriages should be reported to the Registrar General ?

A. That would be perfection of the system but it will greatly increase the work.

Q. But records will go daily and he will examine them daily ?

A. That is possible.

Q. Is there a system among the Mohamedans enabling registration to be reported and are registration records kept by the proper authority ?

A. Mohamedans have the option of being married before the Registrar.

Q. They are married by the Kazi but the report of the marriage is made to the prescribed authority.

A. Yes.

Q. Can you tell me what percentage of marriages among the Mohamedans is being reported to the proper authority ?

A. It is very difficult to say.

Q. Are Parsi marriages similarly reported ?

A. Yes.

Q. So there is a law requiring compulsory registration of Parsi, Christian including European marriages and it is permissive among Mohammedans. All that is required is a compulsory law for Mohammedans and for the remaining communities. Do you think it will be helpful and practicable ?

A. Yes.

Q. On whom would you place the obligation to report the marriages—on the parents of the marrying parties or also on the priest ?

A. Primarily on the guardians.

Q. And not on the priest ?

A. No.

Q. In the case of Christians is it the priest who is to make a report ?

A. Among the Christians there are licensed priests but among the Hindus and Mohamedans they are not licensed priests. I would place the obligation on the parents.

Written Statement, dated 8th November 1928, of Mr. K. C. ROY CHOWDHURY, Editor, Desher Vanee, Noakhali.

1. Yes, there is great dissatisfaction with the present law as can be evinced from speeches in the legislature and in the press. Even in 1891 there was a strong public opinion which felt 12 years was too low.

2. There are no circumstances justifying the retention of the law as it is. An advance on the present law is made imperative by various causes, foremost of which being, as we conclude from our observation, medical.

3. In the crime-wave—the wave of seductions and rapes—that is passing all over the province, this district is not prominent though it is by no means immune from the crimes of the Mature. The Amendment of 1925 could not succeed in preventing cases of rape outside marital state or the improper seduction of girls. To make the law effective the age must be raised, the system of keeping broth

should be well-regulated if not abolished. The problem of seduction, rape, etc., has long acquired an alarming dimension in this province at least, and we would urge Government to devise special measures on the lines recommended by the Women Protection League and in consultation with the League and other workers in the field.

4. This has hardly shown any appreciable result.

- (i) We are inclined to believe otherwise, though, we fear, we cannot contest the opposite point of view for obvious reasons.
- (ii) Public opinion is unquestionably keen on the point in general, but naturally shy and reticent whenever any concrete case would crop up. The law has helped, however, in the formation of its general outlook, though education, enlightenment and press may claim the greater credit.
- (iii) Marriage age is steadily rising. In the educated middle classes marriage beyond 13 is the rule; but the lower classes are not following up the middle classes in the matter. The law, we believe, has not helped the middle classes in raising the age of marriage.

I would urge the Government to fall in with the public opinion.

5. In our part girls generally attain puberty at about 13. It does not differ generally in different castes, communities, etc.

6. Cohabitation is generally common.

- (1) Not before puberty.
- (2) Soon after puberty.
- (3) Before the girl completes 13 years if she has acquired puberty in cases, of course, in which the girls are married and have the companionship of their husbands.

These cases seldom—if at all—come to Court.

7. 'Religious injunction' is a convenient for the dichard section though there is no penalty prescribed for non-consummation of marriage before or after puberty. The *Sastric* rules are always elastic and often contradict each other. Even reformers could quote injunctions to support their case. All agitation for early marriage is got up by the corrupt priest-craft and some powerful forces at their back who commandeer them as the leaders of orthodoxy.

8. Yes. It sometimes coincides with the consummation of marriage and sometimes takes place anterior to it as the case may be. The ceremony is sure to be performed after the attainment of puberty. It takes place within 16 days after the menstruation period is over.

9. Certainly not. I think a girl is not fit to stand the strain of sexual intercourse *at least* after three years (i.e., about her 16th year) of her female sickness. We are of opinion that four or better still five years should elapse, i.e., the girl should be 17 years or 18 years old, when she should be allowed to cohabit.

10. Considering the general ignorance of the girl 18 should be considered the minimum age at which they can arrive at a proper understanding of the consequences and, therefore, can give an intelligent consent to cohabitation.

11 & 12. I have come across many such cases. In some cases girls are reported to have been murdered by their husbands; in other cases they have suffered from T. B., Anaemia, Affected eye-sight, etc., etc., of which medical men know better. Weakness and early death of the girl and the child often follows child birth and premature motherhood of mere girls. (The alarming figures of infantile mortality may be noted.) I am definitely of opinion that early consummation is responsible for arresting the physical, intelligent and moral progress of our people.

13. Yes, there has been considerable improvement in the general public opinion, specially among the educated middle classes, who have practically advanced beyond the scope of the present law.

14. No.

15. Difficulties are experienced at times. A proper and strict system of birth registration can perhaps minimise the effects.

16. The difficulty would be reduced if the age is raised to 16 years.

17. It would be better if separation can be effected. The age for extra-marital offences might be fixed at 18, while those for marital offences might be lowered to 16. Besides the regular punishment under I. P. C., *whipping* is recommended as a form of punishment deterrent to sexual offences.

18. We suggest the holding of the Court in camera for all such offences, marital or extra-marital.

20. Public opinion in Bengal would back up both the provisions.

21. It would not do merely to rely on social reform. There must be legislation which is in itself both propaganda and a recognition of the success of such propaganda.

Oral Evidence of Mr. K. C. ROY CHOWDHURY, Editor, Deshar Vanee.

(Calcutta, 19th December 1928.)

Q. In our answer to question 6 do you mean to say that before a girl completes her 13th year if she has attained puberty there is consummation?

A. Yes, that is so.

Q. Do you think there is a large number of cases where marriage is celebrated on the girls attaining puberty which may be below 13?

A. I think in some cases it is so.

Q. That means that there is a breach of the present law?

A. Yes, there are many cases in which the law is broken.

Q. You say in answer to Question No. 20 that public opinion will back these measures. What is the age that they suggest for marriage and age of consent?

A. 14 for marriage and 16 for consummation in marital cases.

Q. And outside marriage?

A. 18.

Q. What do you mean by public opinion in Bengal will back these questions?

A. I mean even the orthodox people in mofassil cannot get their girls married before 14 or 15.

Q. Have you reason to think that the large majority of those who have pre-puberty marriages will back up this suggestion?

A. I think they will support because they cannot get their girls married before 14.

Q. What are the causes?

A. Among the educated classes boys do not marry unless they are graduates and can earn something; so they prefer higher age of girls. Amongst the lower classes there are many reasons of which economic reasons are greater and dowry system is also one of the reasons.

Dr. Beadon :—In answer to Question Nos. 11 and 12 you say that in some cases girls are reported to have been murdered by their husbands. What do you mean by girls are murdered?

A. I know from my medical friends that these cases are reported to have occurred but they do not come to court. They first went to them for treatment and even in these cases the girls expired.

Q. What are the ages of these girls?

A. I know of 2 cases—one girl was 11 years and another was about 10.

Q. When did these cases happen ?

A. About 2 years ago.

Q. What class of girls were they ?

A. They were Nama-sudras.

Q. Did the girls actually die ?

A. In one case the girl died actually and in another case when the doctor was called in she was dying.

Q. Why did the husbands murder in these cases ? Did the girl not consent to cohabitation or did they die of injuries received on account of cohabitation ?

A. The doctor told me that it was the cause of intercourse that the girl died but the case was not reported because they said to the parents that she died of diseases.

Q. Are those exceptional cases or are they common ?

A. These are rare cases.

Mrs. Nehru : In answer to Question No. 3 you say that a crime wave has come over the country. What do you mean by this ?

A. Now it has subsided but a year before there were a great deal of these cases.

Q. What is the reason for these cases being so abundant ?

A. The contention between Hindus and Mussalmans was one of the causes.

Q. Are the cases subsiding now or are they still the same ?

A. They have now subsided.

Q. You say that you would urge Government to devise special measures on the lines recommended by the Women Protection League and in consultation with the League and other Workers in the field. What are those lines recommended by the League ?

A. I will send you a copy of the recommendations. They were suggested by Mr. S. R. Das a member of the Committee.

Chairman : Was the fixing of the age of marriage or the raising of the age in marital or extra-marital cases one of those recommendations ?

A. I think raising the age to 18 in extra-marital cases was one of the suggestions.

Dr. Beadon : You say that in some cases girls are reported to have been murdered by their husbands. What were the ages of the husbands ?

A. Above 35.

Mrs. Nehru : You say that some powerful forces are behind the back of the priests. What are those powerful forces ?

A. There are some Zamindars who do not themselves follow the Sastras in this respect, but they support these conservative and reactionary measures and help these people.

Q. What is the motive behind it ?

A. They support the priestly classes so that they might help them at the time of elections and otherwise.

Q. Do you advocate whipping in marital cases also ?

A. Yes ; I think in marital cases the boys should be whipped.

Mr. Bhargava : You said that there were crimes in certain districts in Bengal. What are those districts ?

A. Rangpur, Mymensingh and Faridpur.

Q. Are there many instances of these cases in these districts ?

A. Yes.

Q. Have you only seen the reports in the papers, or have you got personal knowledge of the cases ?

A. I have only read about them in the papers ; I have no personal experience.

Q. Is it a fact that amongst Hindus here widows are not protected, and if they are once touched by Muhammadans they would not be protected any further ?

A. That was so formerly, but it is now changing.

Q. Is widow marriage practised amongst any classes ?

A. Yes ; it is practised amongst certain classes, and sometimes amongst the higher classes also.

Q. Were the cases you were speaking of cases of abduction from the Bhadrolog classes or the lower classes ?

A. Mostly from the lower classes.

Q. Is it not true that amongst the Bhadrolog classes if widows were abducted once, they would not be protected afterwards ?

A. That was the practice before, but now the ideas are changing.

Q. In para. 13 you say that there has been considerable improvement in the general public opinion, specially amongst the educated middle classes, who have practically advanced beyond the scope of the present law. What is the age of marriage amongst the educated middle classes now ?

A. 15 to 16.

Q. What is the age amongst the lower classes ?

A. 11 to 14.

Q. Have you got any knowledge about Muhammadans also ?

A. Yes.

Q. What is the usual age of marriage amongst the low class Muhammadans ?

A. In the district of Noakhali it is between 14 and 16.

Q. What are those classes over whom the priests have a great hold ?

A. The lower class of Hindus.

Q. Can you give the name of any particular caste ?

A. The lower class Sudras.

Q. What is the percentage of marriage which take place before 12 ?

A. It is about 50 per cent. amongst the lower classes.

Q. If the law of the age of marriage is enacted as you suggest, would these classes welcome the law ?

A. They will be apathetic. They will not express an opinion either way.

Q. According to your statement may I take it that amongst priestly class Brahmins also marriages take place late in life ?

A. Yes.

Q. How is it then that when they themselves have marriages late they exercise influence over other people for early marriage ?

A. I have consulted many of these people and they told me that though themselves desire marriages at 12 and 13, it is not good for the poor people.

Q. In para. 3 you say that the amendment of 1925 has not succeeded in preventing rape cases outside marital relations or the improper seduction of married girls. What do you mean ?

A. I say this because I find that these seduction cases have not lessened.

Q. You say that whipping should be one of the punishments. Why do you think whipping would be more effective ?

A. Because I feel it has a greater deterrent effect. Some people do not care for jails, but they are terribly afraid of whipping.

Q. What do you think will be the ages of the husbands who will be guilty of breaking the law, except of course widowers ? Do you not realise that they will be only 16 or 17. Do you think that whipping will have any effect on them ?

A. The guardians will feel the social scandal and they will be more careful.

Q. Do you want them to be whipped like hardened criminals ?

A. It all depends upon the seriousness of the case.

Mr. Mitra : For how many years were you the Secretary of the District Congress Committee ?

A. 5 years.

Q. Are you also the editor of a paper which is widely circulated ?

A. Yes.

Q. Do you come into contact with people in the villages ?

A. Yes.

Q. Are you in a position to say how the Hindus and the Muhammadans will take this law ?

A. Yes.

Q. Are you aware that there is a group of orthodox people who believe that fixing a minimum age of marriage would be against religious beliefs ?

A. They are few in number.

Q. Do you think that if the law is once passed, they will accept it ?

A. Yes.

Q. Do you think that there are Sastraic injunctions both in favour of early marriages and against early marriages ?

A. I think the Sastras enjoin both early marriages and late marriages, sometimes at 8 and sometimes after puberty.

Written Statement, dated 12th August 1928, of the Bangiya Brahman Sabha, Calcutta.

1. The codified provision is practically a dead letter. The consummation of marriage (Garbhadhan) is generally performed on the attainment of puberty, and there is no dissatisfaction.

2. The law of the Age of Consent should remain as it is ; for, further raising of the age would seriously affect the religious susceptibilities of the people and cause widespread dissatisfaction.

3. Crimes of seduction or rape are not frequent in this part of the country. I do not think the raising the age of consent to 14 years succeeded in preventing or reducing cases of rape or seduction. Prompt action by the police to apprehend the culprits seems to be the only means to stop these offences.

4. I do not think the amendment of 1925 raising the age of consent within the marital state to 13 years has been effective in protecting married girls against cohabitation with husband within the prescribed age limit.

The religious sentiment of the people requires that the marriage of girls should be performed before puberty and consummation of marriage on the appearance of first menstruation. I do not think any steps are required.

5. The usual age at which girls attain puberty is 12 to 14. Almost all the girls attain puberty between the ages of 13 and 14. I am not aware that this differs in different castes, etc.

6. Cohabitation is not common before puberty but it is common after puberty. Cohabitation takes place before the girls complete 13 years if they attain puberty before that age. None of these cases come to Court.

7 & 8. Consummation of marriage at puberty is enjoined by religious injunctions. The Hindu Sastras enjoin certain religious ceremonies called Garbhadhan on the first happening of puberty. All Hindu Sastras refer to this ceremony and its uses and objects are explained in all books. Many ceremonies have to be observed. The husband and wife have to fast and gods have to be worshipped and Sradh has to be performed. The Mantras that have to be recited on this occasion conclusively establish the point that Garbhadhan has to be done on the first menstruation.

There are a number of Mantras mentioned by Bhabadeva which all mention "first occurrence of the menstruation".

The Ashwalayan Grihya Parisishta, Chap. I, clearly enjoins that the ceremony has to be performed on the first occurrence of menstruation.

Garbhadhan coincides with consummation of marriage. It has to be done within 16 nights after the first menstruation.

Garbhadhan is usually performed in this part of the country.

All genuine Hindus observe this ceremony. Its antiquity dates from the oldest times, and this practice has been observed in our country continuously without any intermission. In all religious books whether they are Vedas, Smritis, Puranas, this ceremony has been emphatically insisted on.

P, its omission, one incurs sin and the progeny born of him becomes unholy and impure in the eyes of the Shastras.

9. This attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

10. No definite age can be fixed in regard to it. Puberty which varies with physical development is the only point to be taken into consideration. All girls attaining puberty can give consent to cohabitation.

11. I have not come across any case in which mere cohabitation after puberty resulted in injury to health or prejudicially affected her progeny.

12. I do not think consummation after puberty can be said to be early consummation and early maternity is not in my view solely responsible for infantile mortality or in any way affects intellectual or physical progress of the people.

13. Since the amendment of 1925 I do not think there has been any further development of general public opinion in favour of an extension of the age of consent (marital or extra-marital).

14. All women favour consummation on the attainment of puberty.

15. There has been considerable difficulties in determining the age of girls in connection with offences under Sections 375 and 376 and also under Section 363 of the Indian Penal Code. No doctor can be sure about the age of a girl when there is the difference of a year or so and no two doctors will agree as to the precise age of a girl when the difference of a year or six months is in question. I think the attainment of puberty should determine the age of consent. Medical science can easily determine whether a girl has attained puberty or not and extraneous evidence will also be much more reliable if menstruation is fixed as the limit.

16. No body whether a medical or a layman can positively swear whether a girl is 13 years six months or 14 years. The difficulty in determining the age will not be reduced if the age of consent is raised to 14 years or above.

17. Yes, they should be treated as different offences and the punishment in marital offences should be a nominal one and that for the other class remaining as it is.

18. I would suggest a difference in the procedure of trials. The husband should not be treated as an ordinary criminal.

19. Not necessary if puberty is made the age of consent. There should be some restriction as to who should be the complainant.

20. I would not prefer any of the alternatives. People consider their religions as sufficient safeguards which enjoin—

(1) Marriage before puberty, and

(2) Consummation on the attainment of puberty.

21. I am against the codification of any penal law in such matters. The normal evolution in all matters religious and social should not be interfered with by any legislation. The Civil Law should not interfere with the marriage law, marriage being a sacrament with the Hindus.

**Oral Evidence of Mr. Sarat Chandra Sankhya Vedanta Tirtha,
Secretary, Bangiya Bramin Sabha, Calcutta.**

(Calcutta, 20th December 1928.)

Chairman : How long has this Bangiya Brahmin Sabha been in existence.

A. For over 20 years.

Q. What is the membership of this Sabha ?

A. All Brahmins can be members of this Sabha, and there are big zamindars and land-owners amongst them. There are patrons who are non-Brahmins.

Q. Can all of them vote in the Sabha proceedings ?

A. Only Brahmin Pandits can vote in the Sabha meetings. In Shastric matters others except the Pandits cannot vote.

Q. How many Pandits are there in the Sabha ?

A. Over 300.

Q. What is the object of this Brahmin Sabha ?

A. To keep intact the traditions of the Varnashrama Dharma as it has existed through the ages.

Q. Was this memorandum put before the Pandits and did they come to a conclusion ?

A. It was not only placed before the Pandits of the Sabha, but it was also placed before other Pandits.

Q. What is the opinion of the Pandits ?

A. The opinion of the Pandits of Bengal is that they should follow the traditions of the Shastras strictly. Over 300 Pandits from Bengal attended the All-India Brahmin Conference which was recently held in Benares, and there were over 1,200 Pandits from other parts of India. In the whole of the gathering we had only three or four dissentients.

Q. Are the proceedings of the Conference published anywhere ?

A. The main discussion in the Conference was about the marriage age and Sarda's Bill, and the Conference held that the age for menstruation was 10, and so they decided that marriage should be celebrated between 8 and 10.

(The witness here handed over a booklet to the President and said that it contained a summary of the proceedings of the All-India Brahmin Conference.)

Q. Are the decisions of the Conference contained in this booklet ?

A. Yes.

Q. Were the Ayurvedic authorities like Sushrut and Bagh Bhatt considered in these discussions ?

A. They were discussed, but there was a difference of opinion about the readings of the texts. There is a passage of Bagh Bhatt where he says that menstruation is between 12 and 15. It may therefore be inferred that he considered 12 also as the proper age.

Q. If I tell you that the opinion of modern medical men is that before 16 a girl is not fit to be a mother and it is not safe for herself and her progeny, will the Brahmin Sabha reconsider its decision ?

A. If you mean by modern medical opinion only Allopathic doctors and not Ayurvedic I am not prepared to be guided by them.

Q. You say that Aswalayan Grihya Parisishta enjoins that the Garbadhan ceremony should be performed on the first occurrence of menstruation. Where is it so laid down ?

A. I cannot give you the exact text, but the book is in the Asiatic Society's Library, and in the Sanskrit College Library. I have not seen the book with my own eyes, but I came to know of it from another Pandit who has seen it. At the time

of the discussion on this subject, Mr. Tilak quoted this sloka and other Pandits could not answer it.

Q. In para. 12 you say that early marriage and early consummation is not solely responsible. Do you think it is one of the reasons ?

A. Susruta says if the man is less than 25 it will cause infant mortality. He does not say that if the girl is 12 there will be infant mortality.

Q. Supposing the girl attains puberty at 8 or 9 or 10, will she be fit for consummation and motherhood ?

A. It is impossible for a girl to attain puberty at 8 or 9. Even between 10 and 12 menstruation is only internal. External menstruation is not possible before 12 unless it is unnatural.

Q. You say that consummation after puberty does not injure the health of the girl or her progeny. Do you mean to say that if a girl attains puberty at 10 or 11 there can be consummation without fear of injury ?

A. I believe that if consummation takes place after menstruation the girl will not be injured. I have also said that menstruation cannot take place before 10.

Q. Are you a Kulin Brahmin ?

A. No ; I am a Srutriya Brahmin, but I am related by marriage to Kulin Brahmins.

Q. Is there post-puberty marriage amongst the Kulin Brahmins ?

A. There is such a custom amongst them, but they have to perform Prayaschitta before the marriage in those cases.

Q. Is it a fact that they always have post-puberty marriages ?

A. They generally try to get their girls married before 12, but if they cannot get proper bridegrooms they have post-puberty marriages ; but in such cases they have to perform Prayaschitta before marriage.

Q. Do you not know of unmarried girls of 20 and 25 amongst them ?

A. Yes.

Q. In a year how many girls do you think there will be who are not married even after their 16th year ?

A. Many of the girls are married between 12 and 16.

Q. During the last 12 months how many cases do you know of girls who married after 16 ?

A. I remember only 2 cases within the last two years.

Q. How many cases do you know of girls having been married after puberty ?

A. Except these two I have just mentioned, I do not know of any cases in which girls were married after puberty. Before 12, there were many cases within these two years.

Q. In the case of the girls who were married after puberty, did they do the Prayaschitta ?

A. I do not remember.

Q. Did you attend the marriages of these two girls ?

A. I did not.

Q. Were these people who had post-puberty marriages thrown out of caste ?

A. No.

Q. Were they recognised as good Brahmins ?

A. Not as good as before. But they are not very well spoken of in our Sabha.

Q. Are there any other class of Brahmins in Bengal amongst whom there are post-puberty marriages ?

A. I found some of the Rali Kulins giving their daughters in marriage after puberty because of the dowry system.

Q. Apart from any prudential considerations, are there any other class of Brahmins amongst whom post-puberty marriages are common ?

A. Except amongst the Vaidiks who practice early marriages, there are some who perform post-puberty marriages, but even these people do not say that the girls are over 12 when they are married.

Q. Are these people excluded from the caste ?

A. Generally they do not admit that the girls had attained puberty.

Q. Are such cases known to the society ?

A. The people themselves are anxious to get their girls married before puberty because they are afraid they will be looked down upon by the society. But in case they are unable to marry their girls before puberty, the society more or less connives at these marriages.

Q. Are these people kept out of the caste ?

A. If they do not perform Prayaschitta before the marriage they are socially ostracised.

Q. Do you know of any cases in which there has been such ostracism ?

A. I know only of one case.

Q. Where did the case happen ?

A. That was in Mymensingh.

Q. Did they perform the Prayaschitta ?

A. No.

Q. Do you know of any cases where Prayaschitta was made ?

A. Personally I have conducted Prayaschittas.

Q. In how many cases ?

A. In two cases I have personally conducted Prayaschittas.

Chairman : The difference between the Pandits of Bengal and others is that they think that after the praschit is made the marriage is valid and good while the other Pandits say that in spite of the Praschit it is not valid ?

A. Yes, the Bengal Pandits think that after the Praschit no more sin attaches.

Q. The other Pandits were of opinion that after the Praschit the different *kula-chars* will prevail with regard to the marriage being valid and the issue being legal ?

A. Yes.

Mrs. Nehru : Do the Bengal Brahmins consider a wife married after puberty after the performance of Praschit a Dharmapatni entitled to perform the religious rites along with her husband ?

A. That is the opinion of the Bengal Pandits.

Q. Do you consider Bramhcharya to be desirable for the development of one's self which generally is considered to be the object of life amongst the Hindus ?

A. Yes. Otherwise why should we forbid widow re-marriage. We recommend Bramhcharya for ladies.

Q. Only for widows ?

A. For all.

Q. But you say a man must go to his wife on the first occurrence of menses ?

A. According to our shastras a man going to his wife after her menses does not go against the principles of Bramhcharya.

Q. What is the difference between the Bramhcharya period and the Grayhast period then ?

A. There is a difference between these two classes of Bramhcharya. Bramhcharya that is performed without marriage is of a higher class and is called Nirud Bramhcharya.

Q. I am talking of Nirud Bramhcharya ?

A. In the Kalyuga long abstinence or Nirud Bramhcharya is forbidden by *Shas-tras* both for men and women.

Q. Can you give authority for that ?

A. (The witness did not immediately produce the authority.) *Dirg Kal Bramhacharya* should be observed.

Q. How do you interpret *Dirg Kal Bramhacharya* ?

A. 36 years. There are four classes of *Bramhacharya* in our shastras. One is for 8 years, another for 12, another for 24 and another for 36 years.

Q. Is 24 years *Bramhacharya* allowed in *Kalyuga* ?

A. There is a difference of opinion. I find some people observe it.

Q. Is it desirable in your opinion ?

A. If we can perform it for 24 years it is better.

Q. Would you advocate it ?

A. In fact I have got one of my relations in *Bramhacharya* of 24 years. He is reading Sanskrit.

Q. Do you consider *Bramhacharya* to be as necessary for women as for men ?

A. Girls must be married before the beginning of menstruation.

Q. You first said that *Bramhacharya* was necessary both for men and women. How do you reconcile the two statements ?

A. A man has to keep *Bramhacharya* upto the 24th year and the girl from the time of marriage till she attains puberty. If she does not a *praschit* should be performed.

Q. Is there a large number of people who believe in the sacredness of pre-puberty marriages ?

A. They recognise it as a religious *sanskar* but that they cannot observe it is a different thing.

Q. In your statement you say all genuine Hindus observe the *Garbhadan* ceremony. What is the number of such genuine Hindus in your opinion ?

A. About 80 per cent.

Q. I want to bring to your notice that several witnesses in Bengal have said that *Garbhadan* ceremony is absolutely out of vogue now-a-days.

A. I do not admit that statement. They all perform it on the first menses after marriage. If the menses begin before marriage they may not perform it.

Mr. Bhargava : What is the *praschit* that is performed in the marriage is celebrated after the attainment of puberty ?

A. Some cows have to be given for each *ritu*.

Q. Supposing a cooly marries a girl at 16 or 17, how many cows would he give ?

A. In practice one cow means 12 annas for a middle class man and 4 annas for a poor man.

Q. Do you want to stop this hypocrisy among the Brahmins or you want this to continue ? According to you in about 10 per cent. of cases puberty comes on but it is sought to be concealed. This is one hypocrisy. Then at the time of *praschit* it is repeated. You know you cannot get a cow for four annas but still they deliberately say that that must be done. Do you want to stop this hypocrisy ?

A. I am a Hindu. I can't go against the shastras. The shastras prescribe 4 annas for a poor man and 12 annas for a middle class man for a cow.

Q. Now it is useless to believe that a girl has not menstruated when she has actually menstruated ?

A. How can we ascertain when the man himself denies the fact of menstruation. We accept his statement.

Q. You say in reply to question No. 9, attainment of puberty is a sufficient indication of physical maturity. What do you mean by puberty ?

A. I mean menstruation.

Q. Can you refer to any shastric authority that puberty means menstruation ?

A. (The witness read a shaloke.)

Q. It means that a girl attains puberty when menses are firmly established. When every month a woman gets the menstrual flow then she attains puberty and not at the first menses.

A. From the first menses there should be regularity. If there is no regularity it is to be considered that she is suffering from some disease.

Q. In many cases, we have been told by doctors, menstruation does not come regularly even without any disease.

A. There must be some cause. I am myself a medical man.

Q. What do you say about the opinion given by Shushrat that a girl should not have consummation before 16 ?

A. I accept the other reading where it is not 16 but it is 12.

Mr. Kanhaiya Lal : Is that given in any printed book ?

A. No. It is in the manuscript.

Mr. Bhargava : So far it has never been suggested that the word is ' 12 ' and not ' 16 '.

A. There is a shaloke in the Simiriti that conception or child-birth at 16 is inauspicious. So it is clearly forbidden by shastras.

Mr. Kanhaiya Lal : What is that Simiriti ?

A. Ragunandan in an astrological book has got that shaloke.

Q. You can't refer to any reference to any Veda or Simiriti ?

A. No.

Q. What do the Bengal Pandits accept ?

A. Both the readings are accepted.

Chairman : Both are true ?

A. Those who are really learned accept 12.

Mr. Bhargava : May I understand that you want that conception should take place before 12 ?

A. If there is puberty before 12 I am not against it.

Q. Why do you say then in question No. 2 that the law of age of consent should remain as it is ?

A. We consider that there should be no law on the subject.

Q. So what do you say in answer to question No. 2 is incorrect ?

A. Yes.

Q. Should there be any law with regard to extra-marital cases and if so what age would you recommend ?

A. We would recommend a rather high age. That would help in the protection of Dharma.

Q. Say 18 ?

A. I have no objection to 18.

Q. Does any girl realise the meanings of the shlokas relating to Garbhada ?

A. It is doubtful whether any man even understands the meaning.

Q. Do you want that men and women should use those shlokas like parrots without understanding the meaning ?

A. I believe that even uttering the mantras without understanding their meaning has its effect.

Q. Do you realise that in those days when these mantras were recited the reciters understood the meaning and they were only meant for adult people ?

A. I think they understood the meaning when they uttered those mantras.

Q. Are these Garbhada mantras used at the time of marriage also ?

A. In Bengal before the menses these Garbhada mantras are not uttered.

Q. What is the usual period that is allowed to elapse between marriage and Garbhadan ?

A. It depends upon each individual case. If the marriage takes place at an early age, 'Garbhadan' comes off later with the menses.

Q. In reply to question 19 you say there should be some restriction as to who should be the complainant.

A. If in spite of our protests the law is passed we want that the police and the general public should not interfere in these matters.

Q. We have been told by some witnesses that the practice of pre-puberty consummation also obtains in some parts of Bengal. Do you want to stop that practice or are you in favour of that practice ?

A. According to shastras consummation before puberty is a sin and a prashnit has to be performed.

Q. So you will be in favour of a legislation which would fix the period of consummation immediately before puberty ?

A. How will you ascertain when the girl has attained her puberty ?

Q. But you have said medical evidence can easily determine whether a girl has attained puberty.

A. Many a time there are mistakes and for the errors of medical men other men should not be punished.

Q. Do you realise that in all such sections of the Penal Code these difficulties are likely to arise ? In section 363, for instance, these difficulties arise.

A. We are agreeable to have a law of consent fixing the age at 11 because according to shastras girls do not attain puberty before 10.

Mr. Mitra : Are these rules of shastras enjoined for girls only or for boys also ?

A. For both.

Q. The text of the shastras enjoining men not to marry before 24, is that followed in this country ?

A. The shastras enjoin that Shudras should not be married before 24.

Q. What about the Brahmins ?

A. The Brahmins can marry when the Samavartam ceremony is over which takes place with Upnaum ceremony which comes off between 8 and 12 in Bengal.

Written Statement, dated 13th August 1928, of the Bar Library, High Court, Calcutta.

1. There is dissatisfaction among the Educated Communities i.e., Members of the Brahmo and Aryas and among the Progressive, i.e., Hindus who have begun to renounce strict habits of Hinduism—Purdah the keeping of caste, etc.,—though without changing their religion—Christian Indians of all races—and literate Moslems generally.

2. We would suggest making an advance on the present law : and putting upon the Statute Book the ideal at which the Legislature wants to aim.

The reasons why we suggest these are :—

(a) The time would seem to be ripe for making such a change indeed the present would seem to be the psychological moment, which if not seized might slip beyond recall. Women have been stirred questionably, *inter alia* by Miss Mayo's book, and are anxious to demonstrate their sympathy with movements which will show them to be on a par in all things with the enlightened countries of the world.

The demonstration against purdah and the habit of seclusion generally for women, is one such sign of the times.

History teaches us that revulsions of feeling and relapses into conservatism follow sudden departures from ancient usage—unless such departures are recognized and helped.

In this instance the help suggested, is the raising of the age to the highest possible figure.

- (b) Such a course would help not only the progressive referred to in (a) above—but the orthodox communities also.

These communities, so far as can be ascertained, have not joined in the late demonstrations in favour of emancipation. They still respect the ties which bound them. When they are convinced they will be convinced *on principle*, i.e., in favour therefore of the highest figure consistent with health and hygiene.

- (c) On principle—we should recommend the higher age for this reason.

A measure is right or wrong. You cannot have a progressive code of rightness or wrongness.

The decalogue must state the Law and the ideal. To raise the age gradually savours of *treatment*, not of *the ultimate end* of treatment, e.g., no one would suggest that opium or cocaine smuggling should be dealt with on a progressive scale, in reference to the definition of the offence itself—although it is well known that drug-fiends must be gradually broken of the habit.

The ideal should be on the statute book: but we would advise that breach of the law should not be looked for too zealously.

In the Reference in this direction must come from within: and reference will only be desired from within when the most backward and most strictly orthodox are educated in matters of health and hygiene.

3. From information obtained through the Children's Court, and philanthropic institutes we should say that the crimes referred to are decidedly on the increase in relation to minor girls.

There is evidence, e.g., that rich old men of Calcutta import children from the villages, and bound them out, maintaining them for their own unlawful use, at will.

Prosecutions are difficult—as such evidence as is peremptory in a Court of Law, is hard to obtain. In our opinion to make the law effective, we would suggest:—

- (a) Compulsory registration of births in all cases—Town and village—and with regard to all classes of persons.
 (b) Registration upon attainment of the maximum age prescribed under the sections relative to the offences herein discussed:—

The address of the girl at the time of the later registration would be an indication as to whether she was married or not: and in whose protection she was living.

This is the nearest that can be got to policing an Indian home.

- (c) The training and employment of women probation officers to work in connection with the Children's Court and with societies like the society for the protection of children in India.
 (d) The establishment of Homes into which the victims of the Breach of the Law, might be received.
 (e) The attempt to trace and control the practice of mock marriages known among Nama Sudras, as well as among prostitutes of the higher castes—and often arranged by the keepers of Houses of ill-fame to deceive the children whom they kidnap or entrap.

N.B.—One practical difficulty which is likely to arise in connection with the whole question regarding age, under these sections, might be mentioned here—and should be dealt with by the Legislature.

E.g., imagine a girl already married who has come before the Children's Court age, say under 13—and that she is the subject of an order under sec. 12, Act XIII of 1923, "that she be placed in suitable custody." Should she be restored to husband, who has betrayed her trust or would "suitable custody" be either the parents or elderly female relations (if she has any relative at all) or some Home-religious or philanthropic until she is of an age to resume marital relations, under the law.

The removal of the girl from her husband's care may well be part of the punishment to which he is liable.

4. It is impossible to speak generally as to the effect of the 1925 amendment upon such relationships. But this much can be said :—

- (a) The raising of the age seems not to have affected those orthodox Hindus or Moslems who are not convinced of the relation of these matters to health. Even where men understand the positions the older women in orthodox families are apt to force young people to their own way of thinking.
- (b) Politics or the resentment against Miss Mayo's book, or the raising of the question in her book—rather than public welfare, or the appreciation of the public health aspect of the question seems to have influenced and stimulated public opinion of late in this direction. But again—
- (c) This result has been achieved among the literate and orthodox communities only: and
- (d) The raising of the age of marriage is due to a number of different causes having no connection with one another, *e.g.*—
 - (1) Politics.
 - (2) Material progress or poverty.
 - (3) The realization that a girl may be a wage-earner.
 - (4) The lack of bridegrooms acceptable to parent or prospective bride—for the latter has begun to claim a voice in the matter, among these emancipated communities.

Our answer to question 4 therefore is that as to (1) it is impossible to speak generally that as to (2) and (3) public opinion has been stimulated, and within certain areas the age of marriage is being advanced but in our opinion neither of those things is due to the amendment of 1925.

To make the Law effective, we would repeat that the education of the orthodox communities and of the most backward and conservative in all races, and almost house to house propaganda as to the relation of these matters to health—is the only way.

5. Twelve to fourteen is the age at which girls of the educated English-living, and emancipated communities attain puberty in Bengal.

Among communities living in seclusion and in disregard of the laws of health, puberty has been known to be attained as early as eight. Nine to eleven or twelve is usual among these communities. Something has evidently to be set down to the habit of early marriage in successive generations.

The only difference observable besides the difference noted above, is that among agricultural persons, and those who live a healthy outdoor life, maturity seems to come later than to children brought up in the zenanas of the illiterate and strictly orthodox, when these are apt to be re-occupation with the idea of sex and the necessity for reproduction.

6. It is impossible to answer this question adequately. Cases of co-habitation before puberty or immaturity do not come to Court from the homes of respectable persons. Even though the undesirable in these directions may in fact occur and be known to the family physician.

Cases of all these kinds come before the Juvenile Courts.

7. Illustrate orthodox Hindus, *i.e.*, the womenkind in orthodox Hindu Homes whether their man be literate or not expressly quote religious injunction as their excuse and justification for early marriage.

Their belief and quotation is that if a child is married before the 8th year of the life her parents go to a first class heaven, *i.e.*, attain the highest re-birth possible.

If between the 6th and 9th year the parents go to a second class Heaven.

If between the 9th and 11th year only to Hell, *i.e.*, the worst re-birth possible.

The idea being that puberty should be attained in the house of the father-in-law. Priests encourage their belief probably because marriages are an economic incident in the life of a priest, and because priests are often the match-makers employed, and good chances cannot be allowed to escape. But the practice is said not to have Shastric sanction and probably had its origin in history when during the tenth century *et sequetur*, *i.e.*, during the early Mogul invasion of India, it was imperative that every girl-child should have a veil protector.

The penalty for breach of this alleged religious injunction as indicated above is supposed to be paid by the parents in re-birth.

8. These ceremonies are not known in Bengal under their names. The nearest approach we have to them is the ceremony called "second marriage" when the attainment of puberty or of conception, *i.e.*, celebrated by games such as those used at the time of Holi. The ceremony is performed wherever the child may be when the event occurs, *i.e.*, whether in her own home or in her father-in-law's home.

If she in her father-in-law's home when the ceremony is performed and if the family is illiterate and orthodox, the chances are that the marriage has been consummated. Doctors have asserted that it is possible for girls and women to conceive and even have children without ever having attained puberty.

One such case is known in Calcutta—a woman of 23, who had her first child when she was 13, and has had 8 children since, without having yet attained puberty, as evidenced by the usual sign. This is of course an exception, but is an illustration of the difficulty of discussion of the above question.

9. The attainment of puberty is by no means sufficient indication of physical maturity. The child's whole physical being should mature in order to secure health for herself and her child.

We should say that *at least* from two to three years should be allowed after maturity—the rule being the earlier the attainment of maturity, the later the date of consummation.

10. It is impossible to speak generally but we should say in present circumstances at no age—and for these reasons—

(a) The Indian child is taught to regard her husband as her God, and would not dream of opposing him.

(b) She has had no teaching on the subject, and though she may, and often is, too soon acquainted with consequences as such, around her she may have no knowledge of implications, and would not in any case realize that she might give or withhold consent.

11. This question can be adequately answered by Doctors alone.

12. Undoubtedly in the majority of cases though there are cases when the progeny have been healthy, although the mother is a wreck and *vice versa* and again there are cases when both mother and child have been healthy.

Physical degeneracy would seem to be a more usual result of early marriage than mental degeneracy. But undoubtedly the general result is to affect deleteriously the intellectual and physical progress of the nation.

13. See answer to questions (3) and (4). The question seems to have become practical politics over the discussion arising out of Miss Mayo's book, although the first presentation of Dr. Gour's Bill preceded publication of that book.

Public opinion is in favour of raising the age. It is confined to the educated classes. But in the houses of the orthodox to whom individual reformers have had access, an echo is now beginning to be heard.

The younger women are curious for information, and are beginning to think about the possibilities within their reach. The attitude of the older women is a re-inforced conservatism through fear of change. The health and welfare work begun of late in towns, is not without its influence.

14. The answer again is that the educated do not favour early consummation—the illiterate and superstitious do.

15. Very great difficulty is experienced in individual cases. When minor girls are brought before the children's court, physical examination as to age is peremptory, before the magistrate can ever hear the case. The only Doctors appointed by Government are men. This has three bad consequences:—

- (a) The examination has to be of the most cursory.
- (b) And even so the girl children intensely dislike being looked at by a man. They have been known to collapse, with distaste and honour.
- (c) When the children are depraved or of low mental calibre examination by a man, has often accentuated the worst possible impulses, and been the beginning of a life yielded to such lower impulse.

The examination in relation to the sections I. P. C. under discussion would have to be more intimate still than those for more ascertainment and the undesirability of examination by a man Doctor, would be enhanced.

In order to minimize difficulties, it is suggested that *in all cases* women Doctors should be employed for purposes of the necessary examination of minor girls coming before the courts in relation to sections 375, 376, I.P.C., as well as in relation to all cases coming before the Juvenile Courts.

16. The difficulty or margin of error would be minimized in raising the age of consent.

17. We should separate extra-marital and marital offences we do not see how marital offences can either be proved or punished. Respectable parents, as a rule, simply remove their children from the husband's house, where this is possible. Where this is not possible the parents seem to be reluctant, for obvious reasons, to take these cases to Court.

That this is so is due further to the fact that the husband who has been brought before the Court as an accused and thereby humiliated would be at liberty to discard such a wife and marry again—this applies to Hindus and Mahamedans where a husband can marry a second wife during the life-time of the first. The thing being a family scandal made public the relations and guardians of the husband would also encourage the discarding of the unfortunate first wife and taking a second.

With the poorer classes or with defenceless children, bodies like the society for the Protection of children, are most likely to be effective in taking action.

We should leave punishment as under the present Code.

18. We would make no difference in procedure for trial of offences within or without the marital state: but we would suggest that all cases should be tried *in camera*.

The unwholesome curiosity if the general public in these cases, is a menace to public morals.

19. We have no suggestions to make in relation to the protection of the man, *e.g.*, of the alleged offender; experience shows that it is the victim who needs protection:—extortion or exposure being most often used to coerce her protectors to consent to or to compel the girl, to a form of marriage. This is known to have been the case in relation to certain minor girls taken to rescue homes.

20. Legislation fixing the minimum age of marriage is likely to be more effective than legislation relating to the age of consent which is secure from the range of effective interference. Legislation in relation to the age of marriage would be more in consonance with public opinion in Bengal, than the alternative suggestion.

21. The strengthening of the Penal Law cannot effect what social reform would do. What is needed is house to house education and propaganda in these matters as well as education generally.

Oral Evidence of Mr. S. K. Sen, on behalf of the Bar Library Club, High Court, Calcutta.

Calcutta, 30th December 1928.

Chairman : Does this memo. embody the opinion of the Bar Library Club, High Court, Calcutta ?

A. On the receipt of the questionnaire we formed a sub-committee consisting of myself, Mr. Sorabji and one other gentleman and drafted this written opinion. But I would like to say that that may not be the opinion of every individual member out of a total of 250.

Q. That may be said to be the trend of opinion ?

A. I will go a little further and say that this is the opinion of educated men of my community.

Q. But unfortunately the percentage of educated is so small. What would you put it at ?

A. Not more than 5 per cent.

Q. Do I understand that among the Kulin Brahmins there are post-puberty marriages without puberty being concealed ?

A. Yes. I know of instances of girls married at 24 and 35.

Q. Do you think that there are post-puberty marriages amongst Kulin Brahmins ?

A. Post-puberty marriages are very common amongst them.

Q. Are they not ex-communicated ?

A. Not to my knowledge.

Q. Are you for fixing a higher age for marriage all at once ?

A. I am giving you my individual opinion about this. I should like to suggest that the age should be fixed at 16 before which no girl should be married at all and so far as extra-marital relations are concerned, it should be limited to 18. I shall tell you my reasons why I suggest 18 for extra-marital cases. From my little experience for the last 21 years in connection with my criminal practice all over India and all over the Courts of Presidency Towns of Calcutta, I have found that girls between the ages of 16 to 18 have no more idea of the consequences of such an act than the beasts in the street and therefore I suggest that in extra-marital cases the age should be fixed at 18, and whoever has sexual intercourse below that age should be punished.

Q. I shall put it in this way. You want the age of consent to be raised to 18 in extra-marital cases and 16 in marital cases. Is that correct ?

A. Yes.

Q. What minimum age would you recommend for marriage by legislation.

A. 16.

Q. What should be the age for boys ?

A. It should be never below 21.

Q. What do you mean by mock marriages among namasudras ? Please refer to page 3 (e) of your written statement wherein you have mentioned this.

A. We have actually come across such cases among prostitutes in the juvenile courts. In order that they may not come under the clutches of law, they enter into some sort of ceremony as if a particular man is married to a particular woman but which amounts to nothing and thus they want to get out of the law. This is called a mock marriage.

Q. Does this apply to namasudras ?

A. There are some cases.

Q. Do they live as man and wife ?

A. I should not say so in every instance.

Mr. Bhargava : Does that girl subsequently marry some other person ?

A. Possibly she might marry, but these namasudras belong to the old chandala class. They have absolutely no sense of social morality and respectability and they are very ill-educated.

Chairman : Have you reasons to believe that there are many cases of breaches of the law of the age of consent which is now at 13 ?

A. There are a very large number of cases. When I say it is a very large number I don't like to say what is the proportion because it will be a guess-work.

Q. Do these cases come before the juvenile courts ?

A. Very seldom they come. We have no juvenile courts outside the towns of Calcutta.

Q. Did you not say that these cases come before the juvenile courts ?

A. That is in connection with the Calcutta cases.

Q. If the law of the age of consent is itself raised to 14, 15 or 16 and there is no law of marriage penalizing marriages below a certain age, do you think that will be effective ?

A. No. I say that unless there is a penal clause it will become unfruitful.

Dr. Beadon : In your answer to Question 11 you have said that this question can be adequately answered by Doctors alone. Have you not come across cases of girls where consummation has taken place before or after puberty but before full physical development resulting in injuries to the girls or prejudicially affecting their progeny ?

A. In my professional capacity I have come across cases in which there has been co-habitation before and after puberty.

Q. The cases that you have come across were these in marital or extra-marital relations ?

A. In both.

Q. What was the age of the girl ?

A. 11.

Q. Was she a married girl ?

A. Yes.

Q. Will you tell me what happened to this girl ?

A. She gave birth to a child at the age of 11 and died of consumption within six months after. This happened in one of the aristocratic families of Bengal.

Q. Was she a high caste girl ?

A. Yes.

Q. When did this happen ?

A. It happened 8 or 10 years ago.

Q. Do you know such cases within the last four or five years ?

A. I know a dozen cases of girls becoming mothers at 13 or 14.

Q. Have you seen the children of these young mothers when they grow up ?

A. A good deal depends on the environments. Take for instance a child born to a mother of 13 or 14. The child begins his life under certain difficulties. Suppose those difficulties are overcome by artificial means, say good food, etc., although they start with deficiency, it can be made up by such artificial means.

Mrs. Nehru : In para. 2 you say that the ideal age should be on the statute book although you cannot advise a strict application of it.

A. Yes.

Q. Don't you think that this method of dealing with the law encourages the spirit of disregard of and contempt for law ?

A. It is not so. From what I know of my countrymen and the state of education prevalent in the country at the present moment and the desire of my countrymen to advance themselves from time to time, I certainly think that the better class of the population would welcome some such legislation on the statute book so that there would be the feeling at the back of their minds that somebody might step in and penalize the offender if anybody broke the law.

Q. But from our experience of the working of this law so far, we can easily assume that if no particular steps are taken to make it effective any further advance also will remain a dead letter in the statute book ?

A. I will tell you half a dozen cases that happened in Calcutta at least within the last 6 or 7 years in which the fathers of the girls have actually come before the courts with their complaints. This happened after the amendment of 1925.

Q. Can you tell us anything further about these cases ?

A. All these people are of lower classes who are respectable people.

Q. Do you mean to say that they lodged complaints against their sons-in-law because they were actuated with a desire to protect the girls ?

A. Absolutely so. I know of two instances where the girls were aged 11 and 12 whose fathers actually came before the court and said that these young men had brought their daughters without their knowledge and that they refused to let the girls go to their parents' houses.

Q. Do you know what happened further ?

A. The husbands seeing themselves grappled in that way agreed to allow their respective wives to stay with their fathers until the attainment of puberty.

Q. Was there no punishment given to them ?

A. They gave an undertaking to the court that they would not molest the girls. If there are a dozen cases like these and receive publicity in the papers, they are bound to arouse the public opinion.

Q. Do you know anything about these girls after they attained their age ? Were they allowed to live in the family peacefully ?

A. I don't know anything about them further because they don't come to court afterwards.

Q. Can you tell me how the caste of those people took the act of these fathers ?

A. I can tell you about the members of the Bar. The whole court was against the husband.

Q. What were the relations between these people and their relatives after that ?

A. It was more the spirit of humanitarianism than anything else that existed in these two cases because they had the sympathy of all the relations.

Q. In Bengal even if a girl is married at 10, I understand that she is allowed to go to her father-in-law's house at once. Is it not so ?

A. If the mother-in-law or the father-in-law of the girl says that she should be sent to their house, the parents of the girl have to send her but at the same time it is the duty of the parents of the boy to see that there is no sexual intercourse. All these cases happen when the poor girls are in their husbands' houses when they have not attained their age.

Q. Under these circumstances, is it possible for special committees or for social reform organizations existing in the country to take up the initiations of such cases ?

A. That will be an excellent idea if you can do it. As a matter of fact there is now a league and is known as "The Women's Protection League" of which Mr. K. K. Mitter is the Secretary and the late Mr. S. R. Das was the president. Very revolting crimes were committed on Hindu girls by low class Muhammadans and at that time this league came into existence to protect the Hindu girls from falling a prey to such victim. These cases happened in extra-marital relations. So a league of this nature can take up this work.

Q. Will they be given support by the public ?

A. I should think so. At least the educated public will give support.

Q. What punishment would you like to give to the offender in marital cases ?

A. I should say that there should be a graduated scale of punishment, i.e., for the first offence there should be only fines on a graduated scale.

Q. Would you like to substitute bonds for fines ?

A. I would have a bond for the second offence.

Q. If there is a breach of the bond what punishment would you have for it ?

A. A heavier fine should be levied.

Q. What punishment would you have for the third offence ?

A. There ought to be imprisonment.

Q. Would you have any heavy fine when the girl is lower than 12 and the man is over 18 or 20 ?

A. There the penal code comes in.

Q. Does it mean that you want to keep the law as it is ?

A. Undoubtedly. It is an offence of rape under section 376 if the girl is below 12. I would not alter the present law.

Q. You have said that crimes of seduction are on the increase in relation to minor girls. Do you mean to say that the crimes have increased or are they brought to light more now.

A. It is very difficult to say that. I think it is both. My own impression is that there are many more cases which are brought to court now. For instance if a girl is seduced by a Hindu or by a Muhammadan or by anybody else, the family for the sake of preserving the honour would possibly try to hush up the affair or may go to some other villages so that the girl's prospect of getting into a decent family may not be debarred. But at the present time I think that judging from what I have seen in the mofussil parts of Bengal there are more offences of this nature.

Q. Can you give any reasons why more offences are occurring now than before ?

A. It is a very delicate question to answer. My own impression is that it is the idea of those low class Muhammadans who have absolutely no education whatever that they will attain some sort of salvation if they bring these girls and convert them into their own religion.

Q. At page 3(c) you have referred to some Children's Court, and the training and employment of women probation officers to work in connection with the courts. Will you please explain this ?

A. What we really meant was this. We had in mind particularly the girls who are brought to the juvenile courts. Only about six months back five girls were brought by the police before the juvenile court. The youngest was five years old. These girls were not Bengali girls but they were from up-country possibly from Bihar and Orissa. I was asked to appear on behalf of the father who claimed to be the father of one of the girls who was aged about 12, and this incident took place in my professional capacity. I discovered that the eldest girl was allowed to go because her age could not be properly determined and the other four girls were detained by the Court and handed over to the protection of Home

say something like an orphanage. In order to enable these girls to realize their own responsibilities of life we suggested that there should be trained women to educate these girls and supervise them and teach them good work so that they might lead better lives than as mere prostitutes in the streets of Calcutta. That is the idea of my statement (c) in page 3.

Q. Have you got rescue homes for girls here ?

A. There are three.

Q. Do you keep girls as well as boys in these rescue homes ?

A. Raval's Ashram is only for girls.

Q. In para. 8 you have said that *garbhadan* ceremony is not performed in Bengal. Is it a fact ?

A. In point of fact that expression is not even known in Bengal amongst the educated classes.

Mr. Bhargava : You have said there is nothing like *garbhadan* ceremony here and there is no staying of the girl with the parents. Does it not follow that in the case of widowers consummation takes place soon after puberty ?

A. Yes.

Q. Do you also say that when the girl is sent to the boy's parent's house, it is very difficult to exercise that check ?

A. Yes. In the case of a widower marrying for a second time it is invariably true that the girl would have attained her age before.

Q. Do you mean to say that no girl is married before puberty ?

A. It is almost a negligible percentage.

Q. Is consummation in Bengal common before puberty ?

A. Yes.

Q. If it is so, and as you have been pleased to point out in your statement that already there is physical degeneration, may I know what objection would you have got to the enactment of a law ?

A. None whatsoever.

Q. Is the registration of births and deaths working satisfactorily ?

A. In towns it is working satisfactorily but in villages I cannot say whether it is working satisfactorily.

Q. Are you in favour of very accurate birth registration ?

A. Yes.

Q. But you have said that there should be a second registration at a particular period. May I know what it is ?

A. As a matter of fact the name of the child is not entered now. I want that the name of the child should be entered within a certain period. That is what I meant by second registration because the present difficulty is we cannot identify the children.

Q. Supposing a provision is made to the effect that after six months there should be a supplementary report at the Registrar's Office. Will that do ?

A. I don't know the customs all over India. Certain communities give names to children after a year, but even then within the first year there may be chances of a second child. So we should make a provision that within 8 months from date of birth the name of the child should be reported, so that at a later date the identification of the child will be very easy.

Q. As regards the educated persons you have been pleased to say that 99 per cent. of them would welcome the law. Do you imply that the uneducated people would not welcome this law ?

A. I will not say that.

Q. Can you say that they are opposed to it or are they indifferent ?

A. I should think that they would be opposed to it. The lower classes would be opposed to it. I will tell you how. It is a pure economic question.

Q. But if every person likes to marry his girl after a particular age then will not the economic question apply to everybody ?

A. The attendant hardship is there.

Q. May I understand that we are to wait till the economic question is solved ?

A. We must make a move at once. If you educate the lower class population as to what is physically good and bad, that a girl should not be a mother at 13 or 14 and so on, the reform will be there automatically with the spread of education on hygiene and social ideas.

Q. So that may I take it that you are in favour of a propaganda by the Government also ?

A. I am in favour of a propaganda not only by Government, but by anybody that I can get hold of. I make no distinction between Government and non-Government.

Q. Do you think that it is the duty of the Government to take up a propaganda also ?

A. It ought to if it is possible.

Q. You suggest certain kinds of homes in which such girls are kept when the consummation law is broken and when the husbands are sent to jail. Will you kindly explain this ?

A. It would be ridiculous to suggest such a home for marital cases because there are the parents to look after their girls. I referred these home only in relation to extra-marital cases.

Q. Do you also say that this law should'nt be put into practice too zealously ?

A. We should proceed by easy stages.

Q. You are afraid that there might be an abuse of this law and to prevent the abuse of such power, would you like that the prosecution should only be undertaken after the cases have been properly sifted ?

A. That is the real idea.

Q. So that you would want that a certain officer might be appointed by Government to whom such cases might go and who would hold a preliminary enquiry to find out whether the cases can be sent up or not. Am I correct in my premises ?

A. Yes.

Q. There are two ways. Firstly a special officer may be appointed for each district and he may go to the people concerned and make an enquiry and then if he certifies that this is a fit case for prosecution it can be proceeded with or as soon as a case goes to court, you would require a preliminary enquiry to be made. Which would be preferable ?

A. I would prefer a preliminary enquiry by a special officer before the parties are directed to go to the Court.

Q. Would you prefer the preliminary enquiry to be made by a special police officer ?

A. By a Magisterial officer it should be done.

Q. Do you know that except for certain offences anybody can complain under the provisions of the C. P. Code ?

A. That is the criminal procedure code of which you are talking of.

Q. There are certain sections of the penal code in which no prosecutions can be started unless they are sanctioned by the higher authorities. Take for example sedition. What is your opinion about this ?

A. That is because we don't allow anybody and everybody to go before the Court. I want to avoid people promiscuously bringing cases to serve their own private purpose. I would prefer a preliminary enquiry by a magistrate or some responsible officer but not by a police officer of course to find out whether these cases are fit to be sent up.

Q. So do you mean to say that if you appoint a special officer, he will be a kind of expert in those cases ?

A. There comes the question of expenses.

Q. In a District there are so many first class magistrates. Can they undertake this work ?

A. Yes.

Q. Suppose we are unable to have a marriage law and if the Consent Law only is passed, in that case would you like a provision like the one contained under Section 107 that is whenever it is found that the law has been violated and no proof of actual consummation is forthcoming bonds may be taken from the parents of those concerned or from the boys if they have attained majority that they will not commit an offence like that the next time and enforce separation ?

A. It is a very nice idea. The difficulty is who is going to find out whether the bond has or has not been broken. This matter of consummation is much more private than anything else, and so it is much more difficult to prevent these cases.

Q. Do you think that the prevention of these cases would be much more better than punishing the boys ?

A. Undoubtedly.

Q. You have suggested that for the third offence imprisonment should be the punishment. But do you realize that when once the offence is committed every husband would take care to see that no complaint is brought to the Court at all ?

Q. It is a really difficult question to answer, because it will depend upon the girl herself. So if a girl wants to assert her own ideas, then there is some chance or else there is no chance. How the law will actually work is really very difficult to say.

Q. At page 9 (c) you say " that the examination in relation to the sections of the I. P. C. under discussion would have to be more intimate still than that for mere ascertainment and the undesirability of examination by a man doctor would be enhanced." What do you mean by this ?

A. I mean that we want to introduce compulsory examination in such cases wherever it is necessary only by a woman doctor.

Mr. Shah Nawaz : What is the percentage of pre-puberty marriages in Bengal ?

A. I cannot say exactly but it is a very high percentage. It is more than half.

Q. Is it both among the Hindus and Mohammedans ?

A. It is worse among the Mohammedans.

Q. Is it a fact that Brahmins priests go from house to house and preach in favour of pre-puberty marriages ?

A. If they did 50 years back they are not doing it now. They are not allowed to go to the educated houses.

Q. I mean the illiterate men from the countryside ?

A. I think there is no instance in which the priest has gone from house to house encouraging pre-puberty marriages but they generally persuade people to celebrate pre-puberty marriage. The tradition is there but it is fast dying out.

Q. Would you like to punish the priest if marriages are penalised ?

A. If I had the power I would do away with the priest community.

Q. Would you punish them ?

A. He is the man who ought to be punished.

Q. Could you tell me whether the Calcutta Immoral Traffic Act is working very well ?

A. Yes, it is working very well. In the case of smuggling almost 50 per cent. of the police are in the pay of the smugglers. It is the people who ought to look

into this matter but they do not. Over 200 cases were brought before the juvenile courts but if they were busy they should have brought 2,000 cases.

Q. Would you fix the minimum age of marriage at 16 ?

A. I have held determined views about it. My little daughter was married last year. She is a senior Cambridge girl and I told my people including my own father and mother that I would not marry her before 16.

Q. Do you think it will be acceptable to the people ?

A. Yes, if the father holds his own.

Q. Unless you fix a minimum age of marriage fixing the age of consent will never be effective ?

A. But you say it should be fixed at 16 and 16 is a big jump. People will like 14 better.

Q. Don't you think we should begin with 14 and go up to 16 ?

A. But you must make a beginning somewhere.

Mr. Mitra : You are the leading criminal lawyer of the Calcutta Bar and you have extensive practice.

A. Yes.

Q. You know the practice among the mofassil towns amongst the masses ?

A. I have some idea.

Q. Don't you think that marriages before 14 are very rare among the *Bhadralo* class ?

A. Yes.

Q. And boys of depressed classes are also having higher education now and they have also great influence among their community ?

A. Yes.

Q. And other classes are also taking to the practice of late marriages ?

A. They are trying to follow the example of educated classes.

Q. Do you think if by legislation a minimum age for marriage is fixed at 14 there will not be much opposition ?

A. There is always a section of the community who would always oppose any reform.

Q. And in fact they do not follow the shastras strictly because according to shastras the marriage of girls should take place at 8 or 10 ?

A. My impression is that 99 per cent. of the priests do not understand the shastras themselves. They repeat it like so many parrots. Shastric injunctions were given by ancient men who were actually wise men and these were consistent with the then stage of society. They do not really hold good for eternity. Things have changed in the 20th century and you must move with the times and throw away the shastras.

Q. Is it not a fact that unlike the Southern India, here consummation takes place immediately after marriage where early marriages are practised ?

A. Among the lower classes it is not so. Lower classes do not allow the consummation of marriage until the girl has attained puberty. The girl remains with her parents until she attains puberty.

Q. But that is not the practice amongst the Brahmans or other classes ?

A. No.

Q. If a marriage law is passed do you think there should be exemptions provided for hard cases like those people who strictly believe in the scriptures or where there are no parents of the girl ?

A. I do not believe in orthodox beliefs but if there are any hard cases they should be left to the discretion of the magistrate. If the magistrate finds that this man was really believing in the shastras and he would not budge an inch from the shastras he should be exempted.

Q. What should be the punishment—if a marriage law is passed—fine or imprisonment ?

A. I suggest that there ought to be fine in the first instance and imprisonment in the second. This law should be modified 5 or 10 years hence and then you can do away with fine altogether.

Q. If you find a particular parent obliged by certain circumstances over which he has no control to give his daughter in marriage before the prescribed age and he finds himself before the court, it would be a hard case if he is sent to jail ?

A. You can put fine or imprisonment.

Mr. Kanhaiya Lal : In the Canon Law the age of marriage is fixed at 14. Canon Law punishes disobedience in particular cases. According to Baroda Law a man who may have 2 daughters and may be dying, both the daughters may be married. In cases of this character should not a provision be made that previous sanction might be obtained from a particular authority for marriage before the prescribed age ?

A. It should be so.

Q. Similarly in cases of consummation would you like to exempt from punishment boys up to a certain age—say up to 16 or 18 years ?

A. As you know yourself from your experience that English Law lays no charge of rape against a boy because the boy is supposed to be incapable of performing a sexual act. Similarly you can extend the same privilege here.

Q. Up to what age ?

A. Up to 18.

Q. And in those cases you would try to find who is really guilty—bridegroom's parents, relations or guardians ?

A. Yes. I should like to point out that at the present moment the tendency among the college boys in Bengal is not to marry before they have begun to earn something for their maintenance. There is also a tendency among the girls except where they are not learning. Where the girls go to schools and colleges and are enrolled as girl guides, play tennis, hockey or take part in other exercises, they do not like to marry.

Q. If there is a law for the age of marriage at 14 and law of age of consummation at 16, would you recommend that there should be an auxiliary law requiring all marriages to be registered by some central authority giving the names of the marrying parties and ages so that cases of breach of the law may be found out ?

A. That is a good law with a view to identify the parties.

Q. And also circumscribing limit of enquiries ?

A. Yes.

Q. Who should be the authority to register marriages ?

A. Amongst the Mohamedans there is a registrar.

Q. I understand the sub-registrars are given authority to register Mohamedan marriages ?

A. There are certain pleaders who act as Mohamedan registrars besides the kazis. When I say pleaders I mean men not in Government service.

Q. The object is not for staying the marriage but for having a record of marriage ?

A. Usually the sub-registrar ought to be able to do it.

Q. Would you recommend that the same agency that is now employed for the registration of births and deaths namely the local boards, taluk boards or union boards ?

A. In municipal areas it is all right but in mofussil areas where there are union boards it is very slipshod.

Q. Union Boards have been given powers recently and previously the police used to do it.

A. Say for instance there are chowkidars in villages. One child is born in a village he would not take the trouble of reporting the case without any remuneration.

Q. But the headman will report ?

A. Supposing the headman does not do it.

Q. Do you say that registers of births and deaths are not kept properly in rural areas ?

A. Because there is no penalty attached.

Q. Supposing we make it penal for guardians of the child to make a report, would that be effective ?

A. Yes.

Q. Would you entrust registration of marriages to district boards or union boards ?

A. For the mofassil you must have the union boards because there is no municipality and you do not expect a man living 20 miles in the mofassil to go to the town to have the birth registered.

Q. And in the cities ?

A. Sub-registrars are very accessible.

Q. At present sub-registrars perform the ceremony in Mohamedan marriages ?

A. Yes, he charges a fee of Rs. 10.

Q. If the municipality could do it better we can give that work to the municipality. Is it not ?

A. Municipality is in the town and no one will go to report it.

Q. But report can be sent by post.

A. But signature cannot be obtained on the register. If a father or grandfather makes a report he actually signs the municipal register so that his signature is there. And if he sends the report by post it may be lost and he cannot sign the register. Registration must be on spot.

Q. Would you lay the obligation to report all these marriages on the parents or guardians of the bride or bridegroom and on the priest or only on one of these parties ?

A. I think the responsibility of the parents is greater and he should report this matter.

Q. Would you allow the marital cases to be made compoundable so that good relations might be restored between the husband and wife lest the husband may discard the wife and take on another wife so that the life of the wife might be ruined ?

A. Yes, that is better.

Q. Would you allow compounding in suitable cases with the sanction of the court ?

A. In extreme cases where the man has acted as a brute the court may refuse compounding.

Q. In cases under 12 would you allow compounding without the permission of the court ?

A. It is a very difficult question to answer. But where is the guarantee that the husband will leave the wife or allowing her parents to have prosecuted him. So the best thing is that marriage should not be allowed up to the proscribed age.

Q. But in Madras people say that the age of marriage should not be beyond 12. Would you have compounding irrespective of the age of the girl ?

A. If you really allow compounding it should be irrespective of the age of the girl.

Q. At present in marital relations cases under 12 go to the sessions judges and cases above 12 go to the magistrate. Instead of having these two would have matrimonial courts consisting of a magistrate and two non-officials

associated with him in the trial in order to inspire more confidence in the public mind and to expedite the trial ?

A. I think it is quite feasible.

Q. Would you make these non-officials jurors, co-judges or assessors ?

A. I suggest that ought to have equal powers.

Q. You think that two men will be available in each district in whom public has confidence ?

A. Yes.

Written Statement dated 20th December 1928, of Haji Chaudhury Mohammed ISMAIL KHAN, M.L.A., Barisal, Bengal.

1. There is hardly any dissatisfaction but if the people in general knew the provision of the section restricting husbands from having sexual intercourse with their wives, they would have expressed their dissatisfaction by constitutional agitation. Fortunately however the provisions of the section are very seldom applied and so people are not aware of them at all.

2. (1) The present state of illiteracy in the country make it imperative not to attempt any further advance on the present law, so far as it relates to married couples as it may lead to disastrous consequences. It is often forgotten that the age of consent is being attempted to be further revised at the instance of a few highly cultured people of the country who represent not more than 5 per cent. of the population, but the law, aimed at, will apply not only to those 5 per cent. but to 95 per cent. of the illiterate mass as well. The cultured people who want further raising of age of consent even in case of married couples, look at the question from their standard and entirely forget the illiteracy of the mass, their environments and the temptation to which they are open. The children of the cultivators who tend the lower animals from their childhood, get the sexual appetite highly developed even before their attaining puberty, and their opportunities of satisfying such appetite in immoral and unnatural ways are many and various. In the case of such people to further raise the age of consent in the case of married wives, will mean leaving the girl wife to various sorts of temptations by refusing to allow her to satisfy her sexual appetite legitimately. Further raising of age of consent in such cases will certainly mean more enticement and rape cases will frequently occur. Among people of the lower class (cultivators) giving away of a girl in marriage means giving her protection against allurements of illicit intercourse. The husband jealously guards the girl wife's morals and the men of loose morals in the neighbourhood do not dare approach a girl after she is married, unless she had already become of loose character. But if the marriage be delayed or sexual connection with the husband be prevented, the result will be that the girl will fall a prey to allurements and will be ruined before she knew the consequences of her actions. It will be a great disaster in the present state of the country, if the welfare of 95 per cent. of the population are not taken into account in determining the question of further raising of age, and the age is raised merely because in the more advanced countries under entirely different environments, the age has been raised and because a few people of advanced ideas in this country look at things from their standard and want the law to be changed. The legislature should know that 99.9 per cent. of the people accused of offences under section 375 and 376 come from the common class of people and not from men of culture and so in amending the section the condition and environment of those people should be looked at and the law should be framed that it may be suitable to them and may not injure them in any other way. The law, as it is, has made more than sufficient advance already and no attempt should, in my opinion, be made to make a further advance on the present law just now. The cultured people should look to social reforms for further improving the position.

In case of intercourse outside marital tie, the age should certainly be raised, and I would recommend it to be raised to 18, if not to 21, as in such cases the question of protection from husband, etc., does not arise.

3. Crimes of seduction and rape are not more frequently in my district than in any other place of the Province. The amendment of the law has had no perceptible effect. The age in non-marital cases should be further raised to 18, if not to 21.

4. People are hardly aware of the amendment and offences against husbands are fortunately never enquired into or reported, otherwise the disastrous effect of raising the age to 13 would have been apparent—girl wives being prevented from intercourse with husbands would have fallen a prey to allurements of immoral neighbours and seduction and rape would have increased substantially.

5. Girls generally attain puberty at 12. Among well-to-do people they sometime attain puberty at 11 and among people of poorer class sometimes 13.

6. (1) & (2). Among higher class cohabitation is very unusual before puberty, but in the common class it is not so.

(3) People have little regard of age. They have however some regard of the fact of puberty.

Within marital tie such cases are neither enquired into nor reported to anybody.

7. Among the Mahomedans attainment of puberty by the girl irrespective of her age is considered to be a sufficient indication of her capacity for cohabitation.

8. No but sotosha or shadh is celebrated 7 months after the conception.

9. I consider attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage among common class of people who are generally physically more strong than the educated class. In the case of cultured people who are generally physically weaker 13 is perhaps the proper age for consummation of marriage.

10. A girl of common class people with no education can hardly be expected to be ever able to give an intelligent consent to cohabitation with a due realisation of consequences. An educated girl can give such consent possibly at 15.

11. *Nil.*

12. No. High infantile and maternal mortality among common class people is due to economic causes, e.g., malnutrition. Among the educated class high infantile and maternal mortality is due to lack of physical exercise and artificial way of living.

13. Ordinary people are not even aware of the amendments of 1925 except only legal practitioners.

14. Women favour consummation of marriage just after attainment of puberty. Delay in consummation after puberty is considered sinful.

15. Difficulties must always be felt about determination of age as there is no scientific method of positively determining the exact age. In my opinion puberty should be the standard and not artificial age.

16. I do not know.

17. In my opinion marital offences should remain only in the Code as they actually are, and social reform should be trusted for reducing such offence.

18. I would not like a marital offence to be at all tried in court unless it results in a physical hurt to the girl. In the latter case also it should be tried in camera and the maximum punishment should be that to which the accused would have been liable for the offence of hurt.

19. I do not know.

20. I like neither, but I think the latter would be more effective although I would resent it as a limitation on my free will.

21. I would rely on the progress of social reforms only and Government should undertake propaganda work in this line.

**Oral evidence of Haji Chaudhury Mohammed ISMAIL KHAN, M.L.A.,
Barisal.**

(Calcutta, 20th December 1928.)

Chairman : Have you reason to think that amongst the people in Bengal the law of Consent at 13 is broken now ?

A. Yes.

Q. Is it in a very large number of cases ?

A. Yes.

Q. I do not think you would say the same thing of below 12.

A. Yes.

Q. Is that also among the Mohamedans or is that among other communities only ?

A. That is among Hindus and Mohamedans.

Q. You seem to be rather glad that those cases do not come to court ?

A. Yes.

Q. Do you mean to say that all the reasons that you have given of the likelihood of risk to girls apply even if the girl is 13 years ?

A. The law should remain as it is.

Q. Would you not bring it down ?

A. No.

Q. You say that whether there should be a law of consent or law penalising marriages below a certain age, you would like to have the latter.

A. I am opposed to both the laws but if a law is passed my opinion is that marriage law will be effective.

Q. If there is medical opinion to the effect that girls below 16 becoming mothers are in danger of their lives and of their children, would you still continue the present practice ?

A. Yes.

Q. I understand that Mohamedan law enjoins that the wife should be capable of producing good and healthy children. Is that so ?

A. Yes.

Q. Supposing medical opinion is that good and healthy children and healthy mothers can only be had if consummation takes place after 16 years, would you be prepared to modify your opinion ?

A. No.

Q. Do you base it simply on grounds of religion ?

A. Yes.

Q. Supposing a general law is passed would you like Mohamedans to be exempted from that ?

A. Yes.

Dr. Beadon : We have been told that girls were consummated at 9, 10 or 11 and they were so badly injured that they died as a result of consummation. Do you think in those cases we have no right to protect girls ?

A. I think that is a very rare thing.

Q. We were told yesterday of 2 such cases in the last year.

A. In such a vast population 2 cases do not count.

Q. Do you mean to say that it is not necessary to protect the girls ?

A. They should be protected. The Committee is expected to devise means for the protection of such girls.

Chairman : We are guided by the opinion given by men like you.

A. This thing should be checked.

Q. There is no way of checking it unless we have a law of marriage or a law of consent.

A. If you ask my own opinion then I am in favour of it but it is difficult to give a general opinion.

Q. Then how should this evil be checked ?

A. I cannot suggest anything.

Mrs. Nehru : Did you consult the members of your community before you came to give evidence ?

A. Yes.

Q. Did you consult a large number of men ?

A. This is the opinion of a large number of men of my community.

Q. Is it also your personal opinion ?

A. It is both personal and on behalf of my community.

Q. You base your opposition on the ground of religion ?

A. Yes.

Q. But notions differ. There are some very good Mohamedans who say that this legislation will not be against their religion. In that cases what is the criterion for one to know whether it is really against religion or not ?

A. There is no restriction in Quoran about marriage ; one can marry at any time.

Q. At the same time it is left to individuals to marry at any time, and if this law is passed it would not go against the religion. That is the opinion of many good Mohamedans.

A. The law restricts the liberty of man to marry at any time.

Q. You are against it because you do not want interference with the liberty of man ?

A. Yes.

Q. Are you against compulsory education also ?

A. No.

Q. Does that not go against individual liberty ?

A. The Quoran says that both the sexes must learn.

Q. It is not against the religion but at the same time you cannot deny that it is against the liberty of man.

A. In the case of education it is in the interests of the man to have his boy educated.

Q. Would you then relax this principle of non-interference with the liberty of man in cases where you think it is good for them ?

A. In this particular case Quoran enjoins that girls should be educated like boys.

Q. Whenever any contagion breaks out there is compulsory segregation of patients. Are you in favour of that ?

A. Yes.

Q. Is that not an interference with individual liberty ?

A. No because otherwise contagious disease will affect all.

Q. I want you to confine to the fact and tell me whether you consider it an interference with the individual liberty of man or not. The man may want to keep his wife and children in the same house with him and he ought to be the master of his own house.

A. If you do not do so, other persons will die.

Q. If I enlarge this very reasoning and apply it to the marriage legislation I can say that if early marriage is not prevented there is suffering and degeneration.

A. I have said that 5 per cent. are literate and 95 per cent. do not understand these things.

Q. Do those 5 per cent. of people understand the intricacies of contagious disease with which they are affected? Were there not riots when the principle of segregation was first brought in?

A. I do not know that.

Q. And you think all these people realise the necessity of segregation in the case of contagious disease and do it willingly.

A. They do not want to be segregated.

Q. Then they do not understand the implications but yet have to submit to force and they approve of it because it is good for the society?

A. Yes.

Q. If according to the same reasoning it is proved that marriage legislation is good for the society would you approve of it?

A. My personal opinion is in its favour but my communal opinion is against it.

Q. Personally you are in favour of this evil being checked by legislation?

A. Yes.

Q. Is consummation of marriage before puberty against the injunctions of Quoran?

A. I do not know.

Q. So many Mohamedans have given evidence and have said that it is against the spirit of Quoran and should not take place. And you say in reply to one questionnaire that consummation before puberty is very common among Hindus and Mohamedans. Then why are you not in favour of legislation which will bring about condition in accordance with the injunctions of the Quoran?

A. I do not know whether it is against Quoran.

Mr. Bhargava : If the opinion of the Mullahs is that it is against Quoran to have consummation before puberty, will you accept it?

A. Yes.

Q. Supposing there is no religious objection, what is your personal opinion—what should be the age of consummation?

A. My own opinion is that after puberty if consummation takes place there is no harm.

Q. You have said that you are in favour of compulsory education. In that case there will be no marriage before 12 or 13 because children will be educated up to that age?

A. Those who give education to their children never marry them before 15 or 16. In the higher classes among Mohamedans marriage is very late even now.

Q. You have said that there should be compulsory education for children. Supposing there is a law for that don't you think in that case the age of marriage should be 15 or 16?

A. Yes.

Q. And then the law will be that education will take place up to a certain age and marriage will take place after that age?

A. That should be done by propaganda.

Q. So far have Mohamedans done any propaganda?

A. No.

Q. So unless there is a law you cannot fix the age for education and marriage and if it is not done our future generations will go on weakening. Is it not?

A. I cannot suggest anything.

Q. Then let us have the law.

A. I am against law.

Mr. Shah Nawaz : When does the marriage of girls in Bengal takes place ?

A. At 9, 10, 11 or 12 and among the Bhaderloks it is 12 to 15.

Q. Among the Mohamedans 70 per cent. of marriages take place earlier ?

A. Yes.

Q. Is it the spirit of Islam that marriages should take place before puberty ? The religious injunction is that girl's consent for marriage should be taken after puberty but before that her father or grandfather can marry her and if conditions come to such a pass that father and grandfathers abuse such powers is it not the business of Islam to restrain it and to check it ?

A. These are exceptions.

Q. But exception is the rule here. In this part of the country the power is abused and according to *shurah* it can be checked. Do you agree that it should be checked ?

A. Yes.

Q. Supposing we give power to father and grandfathers to marry their girls but restrict it to a certain age, would that be in accordance with the Mohamedan Law ?

A. Yes.

Q. But at present if other relations of the girl except father and grandfather marry her before puberty has she a right to repudiate it ?

A. Yes.

Q. In Egypt the question was raised and there the injunction was that marriage before 15 is unlawful.

A. I do not know about Egypt, but if Mullahs and Maulvis in India say so, it is all right but not otherwise.

Q. You say that after puberty intercourse must take place with the girl otherwise it is sinful. Can you tell me any Quoranic authority ?

A. If for any reason there is delay, there is likelihood of girls going wrong.

Q. But it is not a sin.

A. No, it is not a sin.

Mr. Shah Nawaz : Supposing a Muslim State finds that it is an evil for a man to have two or three wives at one time, can't the Muslim State prevent polygamous marriages ?

A. I don't know anything about it.

Q. Has not King Amanullah ordered that if a man has two or three wives he cannot be taken in Government service ?

A. He has done so but I can't say whether he is right or wrong.

Q. Do you know that in Turkey no marriage is celebrated before 18 ?

A. I don't know.

Q. Do you mean to say if there is an abuse it must be checked ?

A. Yes. The law must not be against Shariat.

Q. You say 80 per cent. of the people marry at 8, 9 or 10. Does the girl immediately go to the husband ?

A. This is the custom.

Q. And both of them sleep in the same room ?

A. They do.

Mr. Mitra : For how many years are you in the Legislative Assembly ?

A. Only from 1927.

Q. Were you in the Bengal Council ?

A. I was. I was a member of the old Imperial Council. I was a member of the Council of State.

Q. Were you the chairman of the District Board, Bengal ?

A. Yes.

Q. Have you zamindari in different districts of Bengal ?

A. Yes.

Q. Have you occasion to come in contact with most cultivators ?

A. Yes.

Q. You think when your personal opinion is against the opinion of the community you are not in a position to publicly express that ?

A. That is so.

Q. Is the opinion of the community that any marriage legislation will be against the Mohamadan scriptures ?

A. It looks like that.

Q. Is it a fact that in the Mohamadan scriptures there is nothing either for or against fixing the minimum age of marriage ?

A. That is so.

Q. Then why do you think that if a minimum age of marriage is fixed it will be against the scriptures ?

A. It will be against custom.

Q. Don't you know that there has been a law as regards Wakaf, registration of documents which is against Mohamadan law ?

A. It has become custom.

Q. If a law is passed fixing the age will it not also become custom after some time ?

A. I don't know what will happen.

Q. You know according to Mohamadan law if a man commits theft his hands should be cut and in case of adultery he is to be stoned to death, is it done now ?

A. It is not done.

Q. Don't you think those variations also mean interference with Mohamadan scriptures ?

A. No, because it is a hardship.

Q. If hardship is proved then you enact a law against the scriptures even. If there is a large amount of infantile mortality won't you consider that to be a great hardship ?

A. I don't think that is a hardship.

Q. You don't think because of early marriage there is infantile mortality ?

A. No.

Q. You think even when a girl conceives at 11 or 12 it does not lead to infantile mortality ?

A. I don't think so.

Q. But if it is proved by medical evidence then I think you will consider it to be a hardship ?

A. I can't say.

Written Statement dated 13th August 1928, of Mr. RASIK LAL BISWAS, B.A., Secretary, All-Bengal Namasudra Association, Calcutta.

1. There is no general dis-satisfaction except in a portion of the Hindus holding advanced views. They think the present age of consent too low.

2. There should be an advance on the present law and the age of consent should be raised, for with early marriage followed by child-bearing, the health of the mother as also of the issue becomes deteriorated. Medical reports show that a woman giving birth to too many children—commencing generally in an undeveloped stage of her health, gets consumption and dies of many diseases. Early cohabitation stands in the way of all sorts of progress—physical, educational, etc., of the girl.

3. The crimes of seduction and rape are not very infrequent in this province. The amendment of the law made in 1925 has not, succeeded, to a great extent, in preventing or reducing the cases of rape and seduction outside the marital state. I propose to raise the age of consent, outside marital stage, to 18 years.

4. Very little. It has not been able to postpone the consummation of marriage at all nor it has stimulated public opinion. I propose that the minimum age of marriage should be fixed by law.

5. The girls attain puberty generally between the ages of 13 to 15 years. It differs in some extent, in different communities, or classes, for the girls of those communities who have to do a good deal of manual work (including woman) attain puberty later than those who have not to do any manual labour.

6. Cohabitation before puberty and soon after it and also before the girl completes 13 years is very common in this part of the country. But the cases very rarely come to court.

7. There is no religious injunction for the practice of the early consummation before or at puberty.

8. Yes. The "Garvadhan" ceremony is usually performed in this province when marriage takes place before puberty. Sometimes consummation coincides with the "Garbadhan" ceremony and sometimes prior to it. It is generally performed soon after puberty.

9. I do not consider that the attainment of puberty is any indication of physical maturity to justify consummation of marriage. I think before the age of 16 of the girl there should be no consummation at all.

10. A girl in India under 16 is hardly competent to understand her own affairs.

11. I have seen a good deal of cases where cohabitation both before puberty and after it but before full physical development of the girl resulted in injury to her health and body. In almost all places these prejudicially affected her progeny. I like to give the details when I adduce oral evidence.

12. In India specially in Bengal early marriage and early consummation are the main causes of high maternal and infantile mortality. These also vitally affect the intellectual and physical progress of the people, to a great extent.

13. It does not seem that there has been a public opinion about this matter and the fact calls for an intervention through legislation.

14. It is very difficult to give a straight answer to this question, as the facts are not the same everywhere and they vary with education and occupation along with social condition of the people.

15. The difficulties have always been felt in determining the age. To direct the keeping of a Register of birth countersigned by the thana officer or the President of the Union Board in every family and to produce the same to prove the age will, to some extent, minimise the difficulties.

17. The two classes of offences should be separated. The punishment in extra-marital offences should be heavier than the marital cases.

19. The existing safeguard is enough for the purpose.

20. Fixing the minimum age of marriage would be more effective in the marital cases, than a penal legislation fixing the higher age of consent. But in the cases outside the marital state there is no other alternative, I think, than to raise the age of consent, to make the law effective.

21. Legislation is absolutely necessary to secure the object in view specially at this stage of the society but to have a permanent effect it certainly depends upon

the progress that the people make in the society by means of education and other social propaganda of a like nature.

Oral evidence of Mr. RASIK LAL BISWAS, B.A., Secretary, All-Bengal Namashudra Association.

(Calcutta, 20th December 1928.)

Chairman : Are you the Secretary of the Bengal Namashudra Association ?

A. Yes.

Q. What is the membership of that association ?

A. About 3 thousand. We have got district branches. Altogether there are about 3,000 members.

Q. Are they all Namshudras ?

A. Yes.

Q. Do you belong to the Namashudra community ?

A. Yes.

Q. Is what you say in answer to question No 6, that cohabitation before puberty and soon after it and also before the girl completes thirteen year is very common in this part of the country, correct ?

A. Yes.

Q. Among what class of people is this common ?

A. I think it is common in almost all the classes.

Q. Does it exist among the Namshudras ?

A. It does.

Q. As soon as marriage takes place the husband and wife go in a chamber ?

A. When the girl is very young she is not allowed to cohabit.

Q. If she is 11, 12 or 13 is she allowed ?

A. Yes.

Q. What is this suggestion that you are making in answer to question No 15 ? You are suggesting that there should be a register of births in the mofussil ?

A. Yes.

Q. Who should keep it ? The headman ?

A. It should be kept in every family otherwise there will be great difficulty of producing the register before the court.

Q. What should be kept, a copy of the register or the register itself ?

A. There should be a birth register kept by each member of the family.

Q. But in case of difficulty the man will say that it is lost or will do away with it ?

A. But it will be countersigned by the thana officer or the president of the Union Board.

Q. I can understand if you advise a public register, but I do not understand a register kept by every member of the family. Would you like that a register be kept by the headman and a copy be given to each man ?

A. Yes, I would like that.

Dr. Beadon : Will you tell us something about these 'mock marriages' ?

A. I have never heard about that in Bengal. I know this much that in our class the male population exceeds the female population and when the marriage takes place the bridegroom has to pay for the bride and there is no dowry system.

Mr. Bhargava : Is it a good amount that is paid ?

A. It is only 30 or 50 rupees. 100 rupees is the maximum.

Dr. Beadon : In answer to question No 11 you say, I have seen a good deal of cases where cohabitation both before puberty and after it but before full physical development of the girl has resulted in injury to her health and body. Would you mind giving us details about one or two cases ?

A. I know of a case of my friend. He was married at the age of 12 and he got a child at 16. The wife died one year after giving birth to the child.

Q. What was the age of the girl ?

A. It may be 9 or 10.

Q. When was the marriage consummated ?

A. I can't say that. The child is still living but is very weak.

Q. When did that happen ?

A. It is only four years back.

Q. Do you know any other case ?

A. I know lot of cases.

Q. Are these all Namashudras or other castes also ?

A. Namashudras and Mohammadans also. There is a Mohammadan friend of mine who was an M. L. C. of Bengal for 6 years. He has got the child but the mother of the child has died and the child is very weak and is unable to do anything.

Q. What is the age of mother ?

A. I don't know the age of the mother but the child is so weak that he cannot do anything properly.

Q. Do you know any other case ?

A. I know of a case where a boy of 8 was married to a girl of 5. When the boy became of age the girl gave birth to a daughter and both mother and the child died.

Q. What was the age then ?

A. The age was about 12.

Q. How long ago did that happen ?

A. It is only two years back.

Q. Any other case ?

A. There are many cases. It may be said that such cases are common. They are not exceptional cases.

Q. Are these cases of first marriage and not of a young girl marrying a husband of 30 or 40 ?

A. There was three or four years difference. I can cite a case of a girl of 11 marrying a husband of 40. The girl died at the time of child birth.

Q. Has that also happened lately ?

A. Yes.

Mrs. Nehru : Is there a large number of Namshuadras in Bengal ?

A. There are about 25 lakhs.

Q. And in Calcutta ?

A. The number is only two or three thousand.

Q. What is their main profession ?

A. They are mostly agriculturists. There are carpenters also. But there are others who are holding some office.

Q. I suppose in Calcutta only those reside who have taken to other professions besides agriculture ?

A. Yes.

Q. What is the state of women's education in your community ?

A. We are very keen about education both of boys and girls. In our community two girls have passed the Matriculation Examination.

Q. In Calcutta or elsewhere ?

A. From Calcutta University and there are many girls who will soon appear for the Matriculation Examination.

Q. Do you observe Purda ?

A. We discourage purda.

Q. But is it observed ?

A. It is observed but not like Mohammadans. In this respect we are not very backward when compared with our advanced brotheren.

Q. Have you any personal experience of crimes of seduction and rape ?

A. Yes. These crimes are very common in our part of the country and as I am Mofussal man I know lot of cases. Before the Hindu-Muslim riots these cases took place but did not come to light and when the riots broke out these cases began to come to light and reported to the police.

Q. So that the actual crime is just the same. It has neither increased nor decreased.

A. Yes.

Q. Among which class of people do these cases occur ?

A. Among all classes.

Q. In the Bhadarlog class also ?

A. In their case they are hushed up but among the ignorant people they are taken to court.

Q. Have any taken place in your community ?

A. They have.

Q. What is generally the age of the girl ?

A. There is no age limit. From 12 or 13 they go to 30 or 50. They are both unmarried girls and widows.

Q. What do you think is generally the object of these seductions ?

A. There are various objects. The trouble is that among the Hindu society widow-re marriage is not allowed.

Q. Is it not allowed in your community also ?

A. We are advanced in these matters and we are having widow-remarriages. It has not yet become so popular in the mofussal and we are trying to make it popular. Widows are not generally allowed to marry and they are in a way compelled to go away with other men. They are willing victims.

Q. Is the treatment meted out to widows such that they generally wish to go away ? Is the treatment bad ? Do they get tired of life ?

A. In the Namashudra community they are not treated in a bad way. They have all the advantages of food, etc. No food is prohibited. They are allowed to eat fish and meat, etc.

Q. Is there any restriction about clothing ?

A. They are not allowed to put on ornaments and they are to put on simple cloth.

Q. Are they allowed to wear colours ?

A. They are to wear only white cloth.

Q. Are they given the same freedom which is given to maidens ?

A. There is no particular restriction.

Q. Is there any motive of conversion behind this seduction ?

A. I don't think so.

Q. What happens to the girls that are seduced ?

A. If a girl is taken away by a Mohammadan she is allowed to live with that Mohammadan.

Q. Is she converted into a Mohammadan ?

A. Yes.

Q. Does that generally end in marriage ?

A. It does, when it is taken away by a Mohammadan.

Q. What happens when she is taken away by a Hindu ?

A. It generally happens that after living outside the village for some time, in Calcutta or some other cities, the man leaves that woman and she returns to the home and that unfortunate woman is turned into a prostitute.

Q. What is the remedy that you propose ?

A. Personally I would propose 16, but considering the views of the people of my community I think 14 years would do for the time being.

Q. Is *Garbhadan* ceremony performed in your community ?

A. Yes it is.

Q. What does it mean when it is prior to consummation ?

A. *Garbhadan* ceremony takes place a few days after puberty. It is generally performed on the first menses after puberty. On the day there is ceremony there must be consummation.

Q. You want the punishment to be lighter in marital cases. What punishment would you suggest, fine or imprisonment ?

A. There may be simple imprisonment for two years or fine.

Mr. Bhargava : You say that this early consummation is not due to any religious injunction.

A. No.

Q. We have been given to understand that among the Brahmins early marriage is not so rampant.

A. I don't think so.

Q. Do you follow the Brahmins in this ?

A. No.

Q. Nor have the Brahmins any sway over you ?

A. No. We have got our own Brahmins.

Q. Are they called Namashudra Brahmins ?

A. Yes.

Q. What is the usual age of marriage amongst them ?

A. The same as ours.

Q. Then is this evil of early marriage all due to social custom ?

A. Yes.

Q. If the age of consent is raised to 14 your community will not object ?

A. My community will have no objection.

Q. Is there any propaganda going on in your community to stop early marriage ?

A. We are having the propaganda for the long time past.

Q. How much time ?

A. 10 years.

Q. But still you have not succeeded ?

A. No.

Q. Do you think legislation is absolutely necessary ?

A. We want it very urgently.

Q. You are speaking about seduction and rape cases. What district do you belong to ?

A. Jeysore.

Q. What is the Mohammadan population there ?

A. 60 per cent. and over.

Q. Have you got any idea how many cases come to court ?

A. Only a few cases.

Q. How do the injured people agree to hush up these cases ?

A. The parents of a respectable family do not like to go to court.

Q. Do they not pursue the girl ?

A. No.

Q. Do they leave her ?

A. Yes.

Mr. Mitra : Is the Namashudra largest class amongst Hindus in Bengal ?

A. Yes.

Q. Among you there are people who are pleaders, doctors and high officials ?

A. Yes.

Q. And in fact the Namashudras as a class are not really a depressed class ?

A. In no way we are inferior to any other class.

Q. So what the Secretary of the Brahmin Sabha has said that the Namashudras implicitly follow the Brahmins is not correct.

A. They may say so, we never agree to that view.

Q. In fact do you think the influence of the younger generation of the Namashudra class is greater than the Brahmins and the others ?

A. Certainly.

Q. Are they having a movement to have these early marriages abolished ?

A. Yes.

Q. Do you think if the age of marriage is fixed at 14, the Namashudras as a class will not in any way oppose the legislation ?

A. We have ourselves in our own conference passed a resolution against early marriage and have asked for an age being fixed.

Q. What ages have you passed ?

A. 14 for girls and not less than 20 for boys.

Q. In what year ?

A. Three or four years continuously in all our annual meetings.

Q. If the marriage age is fixed at 14 how would you prevent consummation for two years if you suggest that it should not take place before 16. For that you think the consent law is necessary ?

A. Yes.

Q. For extra-marital cases there is no other alternative but the law of consent. For the marital cases do you think that the age should be fixed at 16 or same as marriage ?

A. It should be 16.

Q. Will your community accept it ?

A. Certainly.

Q. You know other classes in villages also. How will the depressed classes take it ?

A. We have a Depressed Classes Association. I was for sometime the General Secretary of that association. We have also passed a resolution in that conference. We have asked in that resolution to make a law fixing the age of marriage. All the leaders of the depressed classes met there.

Q. So we can take it that all the depressed classes which form about 90 per cent. of the population of Bengal will support this legislation ?

A. I think so.

Mr. Kanhaiya Lal : What is the membership of the Depressed Classes Association ?

A. We had about 3 or 4 thousand delegates. We have representatives from each district.

Q. When was the meeting held ?

A. In last July.

Q. Who presided ?

A. Dr. Mani Mohan Das. The Association is called the Bengal Peoples Association.

Q. Can you send us these resolutions ?

A. Yes.

Q. Both of the Namshudra Conference and the Bengal Peoples Association ?

A. Yes.

Written Statement of Mr. D. P. Khaitan, 43, Zakaria Street, Calcutta.

1. There is dissatisfaction with the present state of the law as to the Age of Consent in the progressive section on account of the fact that the age fixed is too low.

2. An advance should be made on the present law. When law exists on any question it is desirable that it should be such as to be really beneficial for the community at large. Under the present law sexual intercourse is permitted outside the marital state if the girl is above 14 years of age and within the marital state if the girl is above 13 years of age. I do not think that anybody can seriously contend that either at the age of 13 or even at the age of 14 a girl is physically fit for sexual intercourse without affecting her health or the future progeny. Consequently giving legal sanction to intercourse at such age amounts to violence of the most elementary principles of humanity and of the good of the country physically, religiously and economically. The law should be so amended as to make it an offence to have intercourse with a girl who has not attained an age at which it is medically considered that sexual intercourse would be permitted without let or hinderance and without injury to the health of the girl and to the welfare of the community.

3. I cannot answer this question.

4. The amendment of 1925 raising the age of Consent within the marital state to 13 years cannot by itself be said to have been quite effective. It cannot be denied that it has to a certain extent stimulated public opinion and has to a certain extent been responsible for inducing people to marry girls at a higher age than used formerly to be the case. The better course would be to prescribe by law that marriage of a girl should not be permitted at an age at which it is found by medical experience that girls generally become fit for married life. After marriage takes place it is very difficult to prevent girls being sent to their husband's family. When a girl goes to her husband it becomes difficult to prevent the effects thereof. A breach of the Penal law in this respect is difficult to prove. It may be suggested that the very sending of the girl to the husband's family before a certain age is reached may be made a criminal offence. But various complications might arise in that event; for example, when the husband falls ill or there is a function in the husband's family like marriage, worship, etc., and various other occasions which need not be enumerated. To properly protect girls, therefore, the best thing is to provide that marriage shall not be permitted below the prescribed age.

5. In the Marwari community a girl generally attains puberty at about the age of 14.

6. Cohabitation is not unknown in all the 3 cases mentioned. The cases do not come to Court.

7. It is never contended that there is any religious injunction for the early consummation of marriage before or at puberty. There is a considerable section in my community who think that there is religious injunction for the performance of marriage before puberty. There is again the conviction of a considerable section of my community that there is no religious injunction even for the performance of marriage before or at puberty. In fact, cases are known in which even in the most orthodox families girls have been married after puberty and no voice has been raised against the propriety of such action. If it was seriously contended that there was religious injunction for the performance of marriage before or at puberty there would have been a cry raised in each and every case in which the girl was married after the attainment of puberty, but no such cry has ever been raised. I don't think that the real Hindu religion really enjoins early marriage. On the other hand the Hindu religion prescribes life-long celibacy as the ideal. Therefore far from prescribing any penalty for non-performance of marriage before or at puberty the religion commends the practice of there being no marriage. It is believed that due to certain circumstances prevailing in India some years ago there are certain texts which recommend the performance of early marriage in the case of girls. It cannot be contended that circumstances which justified that course at a certain time now continue. With the disappearance of the justified circumstances all justification of early marriage has absolutely disappeared.

8. 'Gaona' is usually performed in my community. Generally it coincides with the consummation of marriage. It has no connection with the attainment of puberty but is almost always performed in the third year after marriage. A breach of this rule is made when an aged man marries even a young girl. In such event the aged man does not permit his wife to stay with her parents for two years after marriage but insists on the wife living with himself.

9. I don't think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I have heard it from doctors and this information is confirmed by my own observations that at least a year or two is to elapse after the attainment of puberty before physical maturity can be said to have been attained.

10. I think the minimum age would be 16.

11. I cannot cite specific cases but the complaint is general.

12. I am emphatically of this opinion.

13. Yes ; generally.

14. No.

15 and 16. I cannot answer these questions.

17. There can be no logical basis for prescribing different ages for extra-marital and marital offences. But having regard to the conditions prevailing in India at present it may be expedient to prescribe a higher age for extra-marital offence and lower age for marital offence.

18 and 19. I cannot answer.

20. I think legislation fixing the minimum age of marriage will be more effective. This will also be in consonance with progressive public opinion in my community. It would be desirable not to permit marriage of girls below the age of 16, but in the present circumstances to start with fourteen may be fixed.

21. I cannot rely simply on the progress of social reform by means of education and social propaganda. What happens is that the conservative section, more as a matter of ' *zid* ' than anything else continue to obstruct those that are in favour of social reform. Consequently it happens that even those who are convinced of performing marriage at a higher age are greatly hindered from carrying out into action their progressive views. The prevailing circumstances are so injurious to the country as a whole that it is essentially necessary that Penal law should be passed to prevent the early marriage of girls.

Oral Evidence of Mr. D. P. Khaitan, Calcutta.

(Calcutta, 21st December 1928).

Chairman : Do you belong to the Agarwal Marwari community ?

A. Yes.

Q. Are you a Vaishnavaita or a Saivite ?

A. Amongst the Marwaris there is no distinction of that sort. The only distinction is between Hindu Marwaris and Jains. We are Hindus.

Q. Are you the Secretary of the Marwari Association here ?

A. I was Secretary for three years.

Q. Were you once the President of the Indian Chamber of Commerce ?

A. I was ; I am now a member of the Committee.

Q. Were you also a member of the local Legislative Council ?

A. Yes ; I was a member for 5 years.

Q. In answer to question 6 you say that cohabitation in all the three cases is not unknown ? Do you mean to say that there are cases of consummation before puberty, soon after puberty, and before a girl is 13 years ?

A. Yes ; there are cases.

Q. In the cases in which you say there is cohabitation before a girl completes 13 years, is it due to the fact that the girl is sent to the husband soon after marriage ?

A. In our community what happens is that the girl is sent to her husband in the third year after marriage. But before the Gaona ceremony takes place, there are occasions on which the girl is sent to the house of the husband for temporary residence. There are other cases in which the girl is sent to the house of the husband for permanent residence without waiting for two or three years. The latter thing generally happens in the case of widowers marrying young girls.

Q. Are there cases in which there is consummation of marriage before the girl completes 13 years ?

A. Formerly it used to be almost a rule. Girls used to be married in their tenth year and they used to be sent to the house of the husband in the thirteenth year. Now the usual age of marriage is not the 10th year, but 12 or 13. Two years from that time takes us to 14 or 15 which is the time when consummation takes place.

Q. Are you for a law fixing the age of marriage rather than a law raising the age of consent ?

A. Yes.

Q. If there cannot be a marriage law would you agree to the raising of the age of consent ?

A. Yes ; Really speaking it ought to be 16. But to start with I will have 14 both for marriage and consummation. But if there is a marriage law I do not think there will be any utility in an age of consent law.

Q. Does your knowledge extend to the Muhammadan community also ?

A. Yes.

Q. Do you know anything about the class of people amongst whom girls are kept unmarried beyond 16 ?

A. Yes ; most of them belong to the Brahmo community. There are also a considerable number of educated Bengali families who marry their girls after 16.

Q. Do you think that if a girl attains puberty at 13 or 14, there is any risk in keeping her unmarried till 16 ? Do you think the girl will go wrong ?

A. I do not think there is any risk in it. But even if there is some risk in it I do not think there is any justification for injuring the health and physical development of the whole community.

Q. Would you then advise the enactment of a marriage law over the heads of a large section of opinion of the orthodox classes ?

A. I would, and that too very strongly.

Q. What would be your justification for doing so ?

A. The justification would be that if marriages are permitted at a very young age, the education of the girls suffers and their health suffers. In fact the community suffers from all possible points of view. To take shelter under orthodox opinion and to injure the whole community for the sake of a particular section, I consider to be criminal.

Q. In any case, the whole community will not be injured because there are some people who have post-puberty marriages even now. They will not be affected whether there is legislation or not.

A. Yes ; for them legislation will not be necessary.

Q. What percentage of Bengalis go in for marriages before puberty ?

A. It is a very difficult thing to say. I am told that in villages even in the Bengali community girls are married before puberty. So far as my community is concerned, there is no distinction between cities and villages in this respect. So far as the Bengalis are concerned, they are advancing the age of marriage in towns.

Q. We have been told that the Marwaris practise early marriages and amongst them premature death of girls is very common. Is that so ?

A. Yes.

Q. Do the Marwari girls generally marry young ?

A. 5 or 6 years ago the girls used to be married in their 10th year. But now the age has risen, and they are now generally married in their 12th year.

Q. Why has the age risen ?

A. The progressive section amongst them is carrying on a great agitation.

Q. Were there meetings of the community held ?

A. We have been having meetings since 1919. We have held meetings of the Marwari Agarwal Maha Sabha. We started with 12 for marriage. Even the orthodox section of the community in their Panchayats recognised marriage at 12, and they said that with the permission of the Panchayat it may be more. I think that if there is no legislation the movement will be very slow and that much more injury will be done which ought to be prevented.

Q. Even when there is no legislation do you think that there is a growing feeling amongst the Marwaris that there should be legislation ?

A. There is no doubt about it.

Q. What about the ladies ?

A. Even they are not in favour of early marriages.

Q. Why ?

A. Because they are seeing the effects of early marriage every day.

Q. What about the highly orthodox ladies ?

A. Our ladies are not progressive, and they can be said to be orthodox.

Q. Some witnesses from Calcutta have said that there are no evil results due to early consummation of marriage ? Do you agree ?

A. I do not agree with that opinion.

Q. Have you seen cases where there have been harmful results from early consummation ?

A. I know that if girls are sent to their husband's house at a young age although they have attained puberty, they are very reluctant to go and they weep. It is very very painful then to see them sent forcibly. Still they are taken away by their husbands, and there have been very bad effects as a result of being sent. Their health, education and everything else is spoilt.

Q. Have you seen 2 or 3 cases like that in the last 5 years ?

A. The number of such cases is growing every day.

Q. Do you not think that their weeping might perhaps be due to the strangeness of the new surroundings ?

A. If it is said to be simply strangeness of the surroundings I would ask you not to believe that. I think it is both.

Q. Have you seen the children of these young mothers ? What is your opinion about them ?

A. My opinion is that they are very unhealthy, and they cannot develop well.

Q. Amongst the Marwaris, do they marry two or three wives one after the other ?

A. Yes ; but not in the life-time of the first wife.

Q. What is the strength of your community here ?

A. We are about a lakh.

Q. How many have married second or third wives ?

A. It is a very considerable percentage ; I think it will be about 30 per cent.

Q. Do these widowers who marry, marry young girls ?

A. Yes.

Q. Is there remarriage amongst you ?

A. We have just started, and there have been 5 or 6 cases of remarriage.

Q. In your experience do you think that girls of 13 or 14 who marry widowers, suffer more than the wives of young husbands ?

A. Undoubtedly.

Q. Is it physically or mentally ?

A. Both ways.

Q. Do a large number of them die early ?

A. The cases of people marrying second wives are more than the cases of people marrying third wives, because after the second wife many people do not marry. But there are also people who have got third wives and fourth wives.

Mr. Shah Nawaz : What is the percentage of Marwari girls who are married before puberty ?

A. I should think it is about 95 per cent.

Q. At what age do Marwari girls usually attain puberty ?

A. I think it will be between 13 and 14.

Q. You say that about 20 per cent. of these young wives die. Can you tell us what is the cause of the high death rate ?

A. It is considerably due to their being married early. I would call it one of the principal causes.

Q. Can you tell me whether girls of 14, if they are not married, will go wrong ?

A. There might be some cases. But married girls also go wrong. That is no reason why you should spoil girls because you fear that 1 per cent. will go wrong once or twice.

Q. Do you think that some of the Marwaris do not observe the Shastraic injunctions ?

A. They do not think it is going against any Shastraic injunction because Shastraic injunctions can be interpreted both ways.

Q. Have there been cases of ex-communication ?

A. No.

Q. Is there any talk at least, if a man married his girl after puberty ?

A. The position is this. The general belief is held that unless a girl is married before the attainment of puberty it would be looked upon as evil by the society. And therefore there is a social feeling that the girl should be married before puberty.

But on account of various circumstances cases have happened in which girls have been married after the attainment of puberty, and when that has been done the people have not been socially boycotted. This shows that there is no religious injunction operating against the performance of marriages after the attainment of puberty.

Q. Is there any talk ?

A. There is a great deal of difference between talk and actual persecution. There are busy bodies who consider it their business to talk about the business of others. It is they who are feared.

Q. Are there cases of consummation before puberty. Is it a very high percentage ?

A. There are cases. I think it would be about 30 per cent. amongst the Marwaris.

Q. I take it that you realise your responsibility in saying that ?

A. Yes ; formerly it was 80 or 90 per cent.

Mr. Bhargava : Amongst the Marwaris in Calcutta there are two sections, the Marwari Panchayat and the Agarwal Mahasabha. The Agarwal Mahasabha is the advanced section and the Panchayat is the orthodox section. The Agarwal Mahasabha deals with social reform problems like widow remarriage. Is that not so ?

A. The Agarwal Mahasabha has not yet taken up the question of widow marriages or inter-caste marriages.

Q. Are not widow remarriages performed ?

A. They are performed by the progressive section of the community, but not by any organisation as such.

Q. Leaving Marwaris in Calcutta, are you aware that amongst the Marwaris of Bikaner and Hissar widow marriages have taken place ? Are you aware that widow remarriages are taking place amongst the Marwari community in other cities ?

A. In our community we do not draw any distinction between towns and villages.

Q. Are there any Marwaris in the villages ?

A. They are scattered in the villages. Outside Rajputana there are no Marwari villages, but there are Marwari families in the villages.

Q. Is it not a fact that in Calcutta most of the Marwaris live alone, whereas their ladies live in Rajputana ?

A. During the last 14 or 15 years there is a tendency for families to live in Calcutta. But still I should consider that the majority live alone.

Q. As regards widowers amongst the Marwaris, is it not a fact that girls are bought ? Are not fabulous prices paid for girls ?

A. You cannot say that generally about all widowers. When a man is over 35 then he finds difficulty in getting a girl and he has to pay quite a good sum of money.

Q. You say that in Calcutta there are about 20 to 30 per cent. of widowers. Is it the same outside Calcutta also ?

A. In the case of those who live in Rajputana the climate is better and the ladies move about more freely.

Q. Do you think that this high death rate amongst women is peculiar to Calcutta ?

A. This high death rate is seen in Bombay, Calcutta and other big towns, and not in the healthy portions of the country.

Q. You say that when girls are sent to their husband they weep. Is it not the custom that when girls go for the first time to their husbands, whatever be their ages, they should weep ?

A. No; it is not looked with favour. It is really due to a disinclination on the part of the girl.

Q. Do you think that girls can realise what the difficulties would be ?

A. If the girl cannot realise the difficulties the case is worse. If she realises the consequences, it is bad enough.

Q. Do you not think that it is not the practice amongst Marwaris alone but it happens in all classes ?

A. I do not think so.

Q. What age would you have in extra-marital cases ?

A. 18.

Mr. Mitra : There is a practice amongst the Marwaris to send their girls to their husbands' house in the third year. Is it mere custom or is there any ceremony performed when they send the girl ?

A. It is called the *Muklari* ceremony which is another name for *Gaona*.

Q. Supposing this ceremony is not performed, are the people looked down upon ?

A. In quite a number of cases the girl does go to the husband's family before the *Gaona* is performed. She constantly goes and comes back.

Q. When should *Gaona* be performed ?

A. *Gaona* may be performed either in the first year or in the third year or in the fifth year. It is not necessary that it should be performed in the first year the girl goes to her husband's house. But now-a-days to perform the *Gaona* in the fifth year is absolutely out of the question. The third year is generally preferred. The first year is preferred in the widowers' marriages.

Q. What are the religious books that the Marwaris follow ?

A. They belong to the Benares school.

Q. In para. 7 you say that, in fact cases are known in which even in the most orthodox families, girls have been married after puberty and no voice has been raised against the propriety of such action. Do you mean thereby that the fact of puberty is concealed ?

A. There is no attempt to conceal it. There is no social obloquy. There are some busy bodies who have made it a question not to advance at all and even prevent others from advancing socially. Generally our community think now that the marriageable age ought to be increased but on account of those busy bodies they are not able to carry out their wishes so much so it has become very difficult to make an advance upon any social custom and it is that vicious circle which is making it very difficult for this social advancement to take place within a short space of time.

Q. Do they rely on some religious injunction ?

A. They are illiterate people. They simply take up one point of view for themselves. They have not read the shastras or puranas or smritis and when any pandit says that a girl should be married at a low age, he is considered to be a good pandit and so on and if any other pandit says that the public propriety demands that the girl should not be married at a low age, they would out-caste him and attribute to him any motives they like.

Q. Do you think these people invariably observe this 10th year rule ?

A. With these people example is not better than precept. These people are only critics.

Q. If a girl is married after puberty, do the Marwaris observe any *prayaschitta* ?

A. I have not heard of anybody performing *prayaschitta*.

Q. Do you recommend that 16 might be fixed as the age for marriage ?

A. Generally our community will not raise any voice against it, but there are busy bodies who will say that they are the representatives of the community and make some noise. Therefore I would recommend 14 as a first step.

Q. What age would you recommend for consummation ?

A. If you don't allow marriages before the age of 14, you can fix 16 for consummation. If you don't do it, it will come of itself.

Q. Will it be in consonance with your custom also ?

A. Yes.

Mr. Kanhaiyalal : Supposing we have a law fixing the minimum age of marriage, would you recommend a system of registration of marriages or reports of marriages, giving the names and ages of the marrying parties ?

A. The system of registration of marriages would be quite good, if you can devise some suitable method of registration. In the villages you don't expect people to go several miles in order to get the marriages registered. But it should be expressly provided that if a marriage is not registered it ought not to become invalid. Then in that case the system of registration of marriages is advisable.

Q. Would you recommend as a qualification for boys who want to marry that they should have at least a certain standard of education, say matriculation examination or something like that ?

A. I am not of any convinced views on this question. I would rather do anything to prolong the age of marriage.

Q. Would this be helpful ?

A. It would be helpful to a certain extent. At the same time some boys wouldn't get the benefit of education so that this matter needs a little further investigation and I cannot answer this question off hand.

Written Statement, dated 22nd August 1928, of Shrimati Rajkumari Das, Principal, Bethune College, Calcutta.

1 and 2. Yes, all educated women and women with a little knowledge of the world think that the age of consent laid down in the present law, is too low. A girl of thirteen or fourteen is absolutely unable to realise the consequences of the act of consent. A woman is not entitled to dispose of her property before attaining the age of eighteen, I cannot understand how then a girl of thirteen or fourteen can barter away the most valuable possession of her life before attaining the legal age of majority. I am also convinced that the chronic state of poverty in the country would decrease greatly if the age of consent were raised to eighteen years.

3. Newspaper reports show rather too frequent cases of seduction and rape in Bengal. This shows that the amendment of the law made in 1925, has not been very effective.

4. The mere raising the age of consent within the marital state cannot, in my opinion, be very effective, and I am in favour of raising the marriageable age of girls.

5. The usual age at which girls attain puberty in Bengal is twelve or thirteen.

7. I cannot attribute the practice to religious injunctions for there are injunctions in Hindu Sastras both for and against the practice. In the Vedas and Vedic literature early marriage seems to be unknown. In Manu and the later Dharmasastras there are injunctions which may be interpreted in either way. I am not aware that the Muslim religious books enjoin early consummation of marriage.

8. This ceremony has practically disappeared among the higher and educated classes of the community, I believe it exists in the villages and among the lower classes of the community. It generally coincides with the attainment of puberty but the consummation of marriage takes place generally much earlier.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I consider that a girl does not attain sufficient maturity before attaining the age of eighteen. Con-

summation before that age is detrimental to her own health as well as to that of her progeny.

10. The age of consent should be eighteen years.

11. I have no personal experience of such cases.

12. From my experience as Secretary of the Maternity and Child welfare work at Dacca, I consider that early consummation and early maturity are responsible for high maternal and infantile mortality. In my opinion this state of things is causing intellectual and physical degeneration of the people of Bengal.

13. Public opinion in Bengal specially among educated women is certainly very strongly in favour of raising the age of consent.

14. I am not aware that women in Bengal favour early consummation of marriage for their children.

15. I do not know of any such difficulties.

16. I cannot say.

17. I have already stated that I am in favour of raising the age of consent in all cases and punishment should be maximum prescribed in section 376 of Penal Code without the exception.

18. I would make no difference.

19. I have no suggestion to make.

20. I do not consider that fixing a higher age of consent can be more effective than fixing a minimum age of marriage. I am in favour of the latter alternative.

21. No penal law is likely to secure the safety of girl wives from the rapacity of their husbands. Hindus and Moslems have laws of their own in matters of marriage and succession and throughout their history such laws have been changed from time to time by a sort of legislation to which they were accustomed. Jimutavahan's Dayabhag changed the law of succession in Bengal beyond recognition. During British Rule such changes have not been sponsored by Government on the ground of non-interference with their religious matters. I cannot see, however how the law can be changed without legislation when the progress of time requires a community to become moving also and not stationary as we have been in social matters for a period of a hundred and fifty years of British Rule.

Oral Evidence of Shrimati Rajkumari Das, Principal, Bethune College, Calcutta.

(Calcutta, 21st December 1928.)

Chairman : How long have you been Principal of the Bethune College ?

A. From June last. Before I was Principal of the Intermediate College for Girls.

Q. How many girls have you got in your college here ?

A. Here there are about 500 girls both in the school and in the College. The college girls are 192. In Dacca we had only an intermediate college, and the number of girls in the college was only about 40.

Q. What is the age of the college girls generally ?

A. The lowest age is 16 or 17. Sometimes there are girls who begin their education after they have become widows. They are a little older.

Q. Are these girls Brahmo girls ?

A. We have got mostly Hindu girls including Brahmmins.

Q. Either as Principal or otherwise have you come in contact with orthodox Hindu ladies of the middle classes ?

A. Yes ; the girls who attended the school at Dacca all of them belonged to orthodox Hindu families. We come into contact with their mothers. I find

that the people in Eastern Bengal are more advanced than the people of Western Bengal.

Q. What is the opinion of the orthodox people in Dacca about their girls' marriages?

A. They do not want to marry their girls earlier. They want to raise the marriageable age of their girls.

Q. What then prevents them from marrying their girls late?

A. Their girls are generally married late. Sometimes however when they get suitable bridegrooms they marry earlier. But as a rule they let the girls go on with their education. These girls pass their matriculation, B.A. and sometimes their M.A.

Q. Do you then come into contact with mother of 200 to 300 girls?

A. No; more.

Q. Do you think that the general opinion prevalent amongst them is that their girls should not be married earlier?

A. Yes; our legislators have always been men, and women have not had a hand in legislation. But we have now risen to self-consciousness. Women have a different tale to tell from men. On the 8th September we held a meeting of Hindu ladies. It was a very representative gathering and it was held in the Albert Hall. We had a full house, and the house was of the unanimous opinion that the age of marriage should be raised.

Q. Did they recommend any minimum age for marriage?

A. Yes; the meeting was held in connection with Sarda's bill, and I think they recommended 16 for girls, and for boys 18 or 20.

Q. Do you know that there are a certain number of orthodox ladies who want to marry their girls late, but who are afraid of social tyranny?

A. Yes; there are many of them.

Q. Are you in favour of fixing a minimum age of marriage, or raising the age of consent?

A. I prefer a marriage Act, something on the lines of Sarda's Bill.

Q. Why?

A. Because I think the age of consent Act cannot help married girls.

Q. Breach of the law will be an offence.

A. But I do not think it will be sufficiently effective.

Dr. Beadon: Are there not orthodox women who are against the raising of the age of marriage for girls?

A. There may be some, but their number is much smaller.

Q. What about the Shahas?

A. There are early marriages amongst the Shahas or commercial classes, the Baisaks and the Shankaris.

Q. A doctor friend of mine at Dacca told me that at Dacca there are a large number of young mothers. To what classes do those girls belong?

A. Shahas, Shankaris, and Baisaks.

Q. Did you see any special cases which you can remember?

A. Yes; as Secretary of the Maternity and Child Welfare work at Dacca I visited many confinement cases, and most of them were child mothers. That is because the Child Welfare movement is mostly amongst the poor classes.

Q. Can you give us details of one or two cases?

A. I am sorry I do not remember the details.

Q. Do you think there is any risk in keeping girls unmarried till 16 or 17 or 18?

A. No; parents who keep girls unmarried generally send them to school. Either the parents keep the girls with them or they send them to a Boarding School. We had girls aged 20 years in our college who were unmarried.

Q. What about the girls who are not sent to school? Do you think there is any risk in their case?

A. From my experience parents are very anxious to send their girls to school. They do not want to keep their girls unmarried in the villages. Therefore there is no trouble.

Q. In other words do you think that if girls are kept unmarried they must be educated?

A. Yes; they must have some sort of education, because you know "The idle brain is the Devil's workshop".

Q. Do you divide your classes according to the ages of the girls?

A. No; we put them into the classes according to their attainments.

Q. Do you have any difficulty about ascertaining their ages?

A. Their mothers know their ages. They have never concealed the ages of their girls.

Q. Do you think that mothers do not generally know the ages of their children?

A. It is so only in the most illiterate classes. But respectable classes of women know the age of their children.

Mr. Shah Nawaz: Are girls generally married before puberty in this part of Bengal?

A. In the backward classes they are married early, but not in the middle classes. Amongst Brahmins, Kayastas and Vaidyas they are not married early.

Q. Is the wife sent to the house of the husband as soon as she is married?

A. Yes.

Q. Does she live with the husband from that time?

A. Yes.

Q. Have you come across with women from the villages? What do they think of early marriages?

A. Girls who are boarders come from the villages, and I know that their parents are not in favour of marrying them early. If, however, they get a suitable bridegroom they do not withstand the temptation.

Q. There are many girls in the villages who are not sent to schools. Do you think that in their case there is the risk of their going wrong if they are kept unmarried till late?

A. I do not think there is any risk of their going wrong.

Q. Have you got girls of all castes in your institution?

A. At Dacca we had all classes of girls including Shankaris and Shahas.

Q. Are they all in favour of late marriages at 16?

A. Yes; the majority of them will agree.

Q. What is the opinion of the Brahmin girls?

A. I had a Brahmin girl who had passed her B.A. She is studying for her M.A. and she is yet unmarried.

Q. Do they take their stand on the Sastras?

A. Yes; but the Sastras can be explained either way. They are very elastic.

Q. Is it binding on them?

A. They all go by the Sastras, but social custom is a greater terror.

Mr. Bhargava: You say that the chronic state of poverty in this country would decrease if the age of consent were raised to eighteen years. How do you say that?

A. What I mean is that people will not be overburdened with a family so early, and they would be able to do something for themselves. Supposing a father married his son early, before the son can earn he is burdened with a family, and when the father dies the whole family is plunged into poverty.

Q. Some witnesses have suggested that there are certain people who regard a girl as a burden and want to get rid of her as soon as possible. So the early marriages themselves are due to economic causes. What is your opinion ?

A. Of course the question can be viewed from both sides. If the parents want to get rid of their daughter, they get her back as a widow burdened with several children.

Q. You say that public women specially among educated women are very strongly in favour of raising the age of consent. What about the uneducated women ?

A. The uneducated women though they themselves are not literate are influenced by their daughters who generally attend schools.

Q. Then according to you both educated and uneducated women are in favour of late marriages. Then do you think it is the men who are against it ?

A. Even the young men are in favour of late marriages, because they want educated wives.

Q. Then do you mean to say that the old orthodox people only are against late marriages.

A. Yes.

Q. Do you think that even at present the age of marriage amongst the lower classes is rising ?

A. I cannot definitely say that.

Q. Do you think there is a difference between 20 years ago and now and that there is a tendency for raising the age ?

A. The progress is very slow.

Q. Do you therefore think that unless there is legislation there will be no progress ?

A. Yes ; we want legislation.

Q. Have you considered the question of punishment in respect of marital cases ?

A. Yes ; the punishment should be maximum as in section 376 Indian Penal Code without exception.

Q. Are you in favour of punishing the husband with 10 years ?

A. Yes.

Q. Do you not realise that if the husband is punished with 10 years the girl will practically become a widow ?

A. I want the husband to be more careful.

Q. Are you in favour of punishing husbands so that one or two cases might be a lesson to others ?

A. Yes.

Q. If you have marriage legislation, how would you punish husbands for the celebration of marriages in contravention of the law ?

A. There should be fine as well as imprisonment.

Q. Do you think one month's imprisonment will do ?

A. I do not think it will do.

Q. Do you want mothers to be sent to jail ?

A. Mothers have generally no hand in the matter ; but if a mother is guilty of the offence she should also be punished.

Q. As regards the consummation law do you think the parents should be punished as abettors ?

A. Yes.

Q. Do you think that boys below 16 or 18 should be exempted supposing they are married and there is breach of the law ?

A. Boys should have lighter punishment.

Q. What punishment would you give a boy of 16 who is only a creature of circumstances. Under the present law the Magistrate can exercise his discretion in the case of juveniles. The maximum punishment is now 2 years. Do you want to alter it ?

A. Two years is good enough.

Q. Do you want separate jails for these offenders ?

A. Yes.

Q. You say that the ceremony of Garbadhan generally coincides with the attainment of puberty, but the consummation of marriage takes place generally much earlier. Do you mean to say that consummation sometimes takes place before puberty ?

A. The girl goes to her father-in-law's house immediately after marriage, and there consummation takes place before puberty.

Q. Is it a small or a large number of cases ?

A. I think it is so in a majority of cases.

Q. Is it so among all classes of people ?

A. It is amongst the lower class people.

Q. Is it a fact that amongst the Bhadrals marriages take place after 14 in a majority of cases ?

A. I think so. I cannot say what happens in very backward villages.

Q. Can you say that in big towns about 50 per cent. among the Bhadrals classes marry their girls after puberty ?

A. Yes.

Q. Had you any occasion to come into contact with people in the villages outside big towns ?

A. I came in contact with mothers of girls who were boarders in our schools. They generally come from the villages.

Q. Therefore may I take it that you cannot say much about the ladies in the villages who have not got daughters studying in your schools ?

A. I have not been to the villages, and I cannot speak for them.

Q. Will you be in favour of a divorce law also ?

A. Some cases have come to me in which I thought a divorce law would have been very useful.

Q. Had you any occasion to come into contact with ladies of orthodox families who really think that their girls should be married before puberty ?

A. I have not come across such ladies.

Q. Have you at least heard of such people having such a notion ?

A. That used to be long long ago. Now at least so far as I know that notion is not generally held.

Q. May I take it that in the towns of Calcutta and Dacca you came in contact with ladies of all classes ?

A. Yes.

Q. Can you say that any of them have any religious notion that their girls should be married before puberty ?

A. I do not know that they have any such religious fear, but the social fear is very great.

Q. If there are real religious notions amongst some people, are you ready to exempt such people from the jurisdiction of this law ?

A. If we make any exceptions, I fear the exceptions will be followed and not the rule.

Q. The exemptions can only be granted by a properly constituted court and the Magistrate will have the discretion to sanction exemptions or not.

A. I think that would be very difficult.

Q. If a marriage law is passed, what punishment would you have for infringements of the law ?

A. I would have imprisonment and fine.

Q. Are you aware that the percentage of the educated classes is very small compared with the masses of the populations ?

A. Yes.

Q. Are you also aware that in the villages except amongst the B adralog classes there are early marriages ?

A. Yes.

Q. And that now in a large number of cases consummation takes place before puberty ?

A. Yes.

Q. So do you think that legislation fixing the minimum age of marriage is essential ?

A. Yes.

Q. Do you not think that there will be opposition from the villagers who now practise early marriage ?

A. There will be some amount of opposition from the illiterate people. But once they see the efficacy of the law the opposition will pass away.

Mr. Kunhaiya Lal : Amongst the girls in your College how many are married ?

A. Amongst the 206 College girls there are not more than 4 or 5 who are married.

Q. What is the highest age of the girls ?

A. Ours is a First-grade college. Therefore the highest age of the girls will be 20 and 21.

Q. You say that age of marriage may be fixed at 16. But Sardar's Bill proposes only 14. In view of the opposition of the orthodox classes would you have 14 as a first step towards the reform ?

A. Personally I am for 18. But as a first step I would agree to 16. I do not think it should be lower than that.

Q. In a certain province a rule has been made that boys will not be admitted in colleges after 1930 if they happen to be married within a certain period. Do you think that such a rule will work satisfactorily in Bengal and help to raise the marriageable age of girls indirectly ?

A. I think that rule will work satisfactorily in Bengal.

Q. Would you recommend its introduction in the educational institutions here ?

A. Yes.

Q. What interval would you allow between now and the enforcement of the rule ?

A. 2 years.

**Written Statement, dated the 24th August 1928, of Mr. M. C. GHOSH,
I.C.S., Secretary to the Government of Bengal, Judicial Department.**

1. I think that the majority of the people of this province are indifferent if not antagonistic to the proposed legislation but there is a strong liberal educated vocal minority who are keen on removing social defects and improving the position of women ; the said minority is increasing in strength from year to year.

2. I am of opinion that a certain cautious advance may be made which will not wholly antagonise the conservative majority.

3. I have in my time as Sessions Judge tried a large number of cases of rape and abduction ; and a good many cases of enticement and adultery. I am of opinion that the common people are hot in sexual desires and are only kept in restraint by fear of punishment.

The amended law of 1925 has not been in operation for a sufficient period to give statistics for forming an opinion as to its effects.

For sexual intercourse outside the marital state I am in favour of raising the age of consent to 16. The present limit of 14 is not effective for protection of girls.

4. The law increasing the age of consent to 13 has not been in operation long enough to make its influence felt among the people. Already however I know of a case where the father of a Muhammadan girl prosecuted her husband for cohabiting with her when she was 12 years 10 months.

(1) When marriages take place under 13, and the parents of the girl are willing consummation in my opinion cannot be prevented by penal action. The law to that extent is likely to remain inoperative.

(2) Public opinion however is being gradually stimulated, and it is probable that as the result of the law parents will gradually in increasing numbers postpone the marriage of their daughters to 13.

5. No answer.

6. I have tried a good many cases of rape of very young girls. I have reason to believe, when girls are married under 13, that cohabitation takes place almost in every case, and as the result thereof the health of many immature girls is permanently injured and it induces a greater mortality among them.

7. I am of opinion that the plea of religion in this matter is a mere cloak for upholding the present customs ; it is unfortunate but it is a fact that the old conservative women are the greatest enemy to the advancement of women, they seem to believe that the sole mission of women in life is to marry and to produce children, and they want to marry the girls as soon as they show the least sexual developments.

8. No answer.

9. The consummation of marriage at or soon after puberty is certainly harmful to the girl and to her progeny. Statistics will show the large mortality of young women in this province. Any one who has reared cattle and dogs knows that young cows and bitches should not be mated at their first puberty, that mating should be postponed till their second menstruation. In that way we maintain the health of our cows and bitches and get healthy calves and puppies. The same rule applies to human beings. Girls are not fully developed in body, till they are about 18 or 19. In all progressive families marriage and consummation should be postponed to that age.

10. I should say 18.

11. I heard a story from a father that his daughter aged 12½ was taken to her father-in-law's house where she stayed a month in ordinary health but within a week of her young husband coming home from school and sleeping with her he got a letter that his daughter had had fever and died and been cremated. See Lyons Medical jurisprudence for reported cases.

12. Early consummation and early maternity are certainly among the chief causes of the high mortality of infants and young mothers. There are certainly other causes but these causes, which it is in our power to remove, should be duly noted. Another grave result is that children born of immature girls and very young men are generally defective in body and brain. I have noticed many eldest sons distinctly inferior in brain and self-control to their younger brothers, and on inquiry found that the parents were very young when the eldest sons were born.

13. The movement finds supporters mostly among western educated liberal minded people and their numbers are gradually increasing.

14. I am afraid that the uneducated conservative women do favour early marriage and consummation.]

15-16. In our courts the only reliable evidence of age is generally the evidence of the Medical Officer who has examined the girl, and doctors can only state the approximate age, and the accused gets the benefit of the doubt. To minimise the difficulty I recommend that the age of consent be raised to 16 outside marriage.

17. I should leave the punishments as they are.

18-19. I suggest no change.

20. I consider that penal legislation fixing a higher age for marital cases is unwise. The law may remain without change. When a young man and a young girl are married and put to bed by their people, it is futile to tell the man not to have intercourse with her; no fear of punishment is likely to be effective; and where parents are willing, no evidence will come forward. The only proper remedy in this direction is to postpone the age of marriage, and to penalise parents who bring about marriages before the fixed age. The age may be fixed at 14. But I am afraid the conservative majority will strongly oppose my proposal.

21. Within marriage penal legislation will have little effect. We must depend upon social reform to make a further advance in this direction.

Oral Evidence of Mr. M. C. GHOSH, I.C.S., Secretary to the Government of Bengal, Judicial Department.

(Calcutta, 21st December 1928.)

Chairman : Before you became the Secretary to the Government of Bengal, Judicial Department, what were you ?

A. I was a first class Magistrate in 1906 and then I was appointed to be an additional Sessions Judge in 1911, and since then I hold the present Office.

Q. In what districts were you working ?

A. Chittagong, Rajsahi, Mymensingh and Barisal.

Q. Which is your home ?

A. Mymensingh.

Q. Do you think that you will be able to speak about those districts relating to these questions of early marriage and early consummation because of your experience in those districts ?

A. I was a Magistrate and as such my experience is mostly from my Courts, and from my social intercourse.

Q. Have you reasons to believe that when girls are married under 13, cohabitation also takes place in every case ?

A. These things were told to me often by my wife who used to inspect the places wherever we go and inspect the primary schools, middle schools and all the schools. Of course she is not in this country otherwise she would be the proper person to be examined. She often told me that girls were used to be taken away from schools at the age of 9, 10, and 11 so that they might be married. I know of one case in Jessore where the girl was aged 11. She was getting scholarship. She used to come to our house and one day I had a glimpse of her and she looked very well-grown and very healthy. She was married within a month thereafter and then six months after that, her body was full of sores and she was diseased and very ugly. All this happened only after her marriage. She did not die because I met her father again and he told me that she was unwell for about two years and that now she is recovering.

Q. What age would you recommend for the marriage if it is penalized ?

A. Before I answer this question I would put it in this way. From my own experience and observations if you want separate ages for marriage and consumma-

tion, you would be committing a mistake. The ages for marriage and consummation shouldn't be separated. That is what I say.

Q. You want both the ages to be same. Am I right ?

A. Yes. If you do it like that it is good otherwise it is not good.

Q. Have you known of any cases of violation of the consent law which is now at 13 within the marital relations during all your experience ?

A. I haven't tried myself any such case brought by any person that consummation took place before this age. Of course in most of my time the age of consent was 12. No such case under the present law of 13 came to me. But as a matter of fact it is my belief that a great many consummation take place before the age of 13 but such cases wouldn't come before the court. I have even given an instance of a girl aged 12½ in para. 11.

Q. Do you think that the age of consent law which is 13 now is known to the people when you say that cases occur but they don't come to the court ?

A. I should say so. I mean that such as other laws are known to them this law also must be known to them.

Q. Supposing it so happens that a marriage law is not passed, do you think that the consent law by itself will be effective if it is raised ?

A. I should say that the age of consent law would be very important in the case of the unfortunate women who are not married. Here in Calcutta the immoral traffic is such that the police get girls of 4, 5 and 6 from the brothels and in these cases the consent law will be very important, whereas in a marital case the consent law alone will not do and in the absence of a marriage law the consent law will be quite ineffective.

Dr. Beudon : You say in your answer to Q. 12 that you have noticed many eldest sons distinctly inferior in brain and self control to their younger brothers because the parents were very young when these eldest sons were born. How did you notice this difference ?

A. I have made a general statement from only particular instances which I know of. Amongst many contemporaries of mine whom I knew in my younger days I find that where the first child is a son, he is a bad unsuccessful man with few exceptions, because the first son inherits all the weak points of the father and every such eldest son has been a great burden and a disgrace to the father.

Q. Would you say there are two or three cases like that ?

A. Quite a dozen cases I can mention. I know cases where the eldest son is an utter disgrace to the father by his misconduct. I can immediately cite a dozen cases where the fathers hold high positions in life and honoured by society and their eldest sons are disgraces to the fathers.

Q. Have they other children ?

A. They have other sons and they are quite good.

Q. Do you think that these eldest sons going wrong is due to the parents being young when they give birth to these sons ?

A. I should say so, because these sons are born of immature girls and of very young men who are generally, defective in body and brain, so much so that these eldest sons do not inherit sufficient good qualities.

Q. The case that you have mentioned in your answer to Q. 11, when did happen ?

A. It happened in 1917.

Q. Do you know of similar cases within recent years ?

A. I know of one case which happened in 1923 when the girl became ill soon after she was taken to the father-in-law's house.

Q. What was the age of the girl when she was so taken to her father-in-law's house ?

A. About 12.

Q. Would you say that this is an exceptional case or are such cases fairly common ?

A. I should say that such cases are quite common.

Q. The case that you mentioned now, did she get sufficient nourishment ?

A. Yes. They were fairly well off.

Q. Do you mean to say that consummation takes place soon after marriage in nearly all cases of marriage irrespective of the age of the girl ?

A. Amongst the educated Bengali people the girls are not married much before 11 or 12, and it is my belief that consummation takes place immediately after puberty and the marriages take place amongst the educated people who are conservatives at about the age of 11 and 12 but amongst the more courageous families girls are married at the ages of 14, 15, 16, 18 and 20. I have known of cases of girls being married at 26 and 27 and in all these cases consummation takes place at marriage.

Q. Do you know any class of people here who marry their girls at a late age ?

A. There is no such class here but those who have more social courage do marry their girls at a late age.

Mrs. Nehru : You say in para. 3 that you are of opinion that the common people are hot is sexual desires and are only kept in restraint by fear of punishment. Can you tell me what do you mean by this ?

A. I say that they are sexually very hot.

Q. In the case that you have mentioned in para. 4 can you tell me what happened further ?

A. I believe that the case was compromised on a pecuniary basis.

Q. What was the social status of the father of the girl ?

A. The father had a little bit of land and was a petty shop-keeper and the other family also was similar.

Q. Was there any blackmailing or extortion of money from the son-in-law or anything of that sort ?

A. No.

Q. Have you known any other marital case like the one you have given just now ?

A. No.

Q. Do you think that there are any other means of making the age of consent law effective besides the raising the age of marriage ?

A. I say that the age of marriage and the age of consent should be the same.

Q. Supposing it is not possible to fix an age for marriage by law, what other suggestions would you make, to make the consent law work effectively ?

A. That, the politicians will decide. I should say that if for instance we legislate that it will be criminal and a person will be liable to sentence for two years if he cohabits with his wife under the age of 15, human nature being what it is, it is nothing but a piece of mischievous law. So let us go and educate them. I must rely upon social reform to make an advance further in this direction because within marriage penal legislation will have little effect.

Q. Suppose special means are devised to keep the boys and girls separate till a prescribed age. For instance if a father after getting his girl married can bring a case against his son-in-law, he can also keep the boy and girl separate if it is enjoined on him by law ?

A. I shall give you an example of a case I know of. The girl was in her father's house and when the parents of the boy came to take her away the father of the girl said that she was not sufficiently grown up and that he wouldn't let her go. As you know it is not by age that growth happens. Some grow well when they are under 13 and others do not grow. This girl was not grown and the father refused to allow her to go and when he was in the shop the parents of the boy came and took her away by force and so it is not possible to keep them separate till the prescribed age

Q. There are certain communities amongst whom it is considered binding by religion to marry their girls before puberty. There are other sections who want to have late marriages but they cannot do so on account of the custom prevailing in their community. Don't you think that such a law will be of great help to such men because they will be able to keep the girls in their houses till the prescribed time ?

A. My knowledge is confined to the districts of Bengal. All such people who do practise early consummation have to delay the marriages of their daughters, and this is the only effective way.

Q. Then you think in Bengal people are mostly for late marriages but that they are afraid of custom and are obliged to perform early marriages. Is it so ?

A. Yes.

Q. Don't you think that such a law would help many a father who wants to educate his daughter till she grows old enough to marry ?

A. But it is the older ladies who are pious that bring about the consummation of marriage earlier.

Q. But for the parents who want to educate their girls, will it not give a good excuse to tell these older ladies that owing to the existence of this law the marriage cannot be consummated earlier ?

A. If the older ladies are told that if the marriages of their girls are consummated earlier, the boys will have to go to jail then perhaps this might influence them.

Q. Do you mean to say that if there is the punishment of imprisonment for breaking the law, then only it will be effective.

A. I should say that the only way to check this evil is to have a proper age for marriage say 14 for marriage.

Mr. Shah Nawaz : What is the usual age of puberty in Bengal.

A. I cannot tell you but I find that some girls are quite healthy and well-grown at 13 or 14 and are quite sexually fit.

Q. Would you say that the age of puberty is between 12 and 13 ?

A. I am only saying from outside knowledge but not from inside knowledge. I should say that some girls might have their monthly course at 11 or 12 and others may have their monthly course at 14 or 15.

Q. Would you say roughly speaking what is the percentage of pre-puberty marriage in Bengal ? Is it very high ?

A. I cannot tell you the percentage.

Q. Is it more than 50 per cent. ?

A. No. I cannot say that.

Chairman : Do you not generally attend marriages ?

A. I don't go to the marriages of younger persons.

Q. Are you definitely of opinion that fixing the minimum age of marriage at 14 is the only solution to prevent early marriage and early consummation ?

A. I should say that, that is the practical solution. But if you think it is impossible to have a marriage law at 14, then the next best thing to do is to increase the age of consent to 14.

Q. But you say that it is not likely to do much good. You say in your statement that you are for a change. Would you put the marriageable age at 14 definitely ?

A. I don't know the strength of the conservative people but still we want to protect the young girls from physical damage and from producing offsprings and so we should take courage in both hands and fix the marriageable age at 14.

Q. But will it not be opposed by the conservatives and others who are against a marriage law ?

A. I should say that when the law is passed those who like the law will obey it and those who dislike it will like to get behind it just as they disobey all other penal laws.

Mr. Shah Navaz : Will they disobey the law and be willing to go to prison ?

A. I mean if the legislators make a law, there will be a penal clause. If you can penalize it that will be good.

Q. Will people determinedly break the law and be willing to go to prison ?

A. They will try to break it and when you bring a case against them they will deny the charge and say in the court that the girl was married at 14 even though the marriage would have actually taken place at her 12th year.

Q. Supposing we prove the age by registration of births don't you think that they will be caught ?

A. It will take several years to make the registration of births effective.

Q. Supposing the law is violated, whom would you punish ?

A. I would punish the parents of both the sides and the priest also but not with imprisonment or hard labour. The punishment should be left to the discretion of the magistrate. The law should be there to put them in fear that they may go to prison for six months.

Q. Supposing we cannot legislate about the law of marriage and we recommend that the age of consent be raised to 15 or 16 and we ask the boys' parents or the girls' parents to execute bonds to the effect that they don't do anything which may bring about the living together of the married couple before the prescribed period would that not serve the purpose ?

A. I don't think that it will be effective.

Q. Do you think that the execution of bonds will be of no avail ?

A. Certainly so. Allowing marriage and penalizing consummation, they will only take care to see that there is no evidence.

Q. The marriage is known to public but the difficulty is that consummation cannot be detected, as to when it takes place. Suppose we take a bond from the parents of the boys and girls immediately after the marriage is over as like the one mentioned above, will that not serve the purpose ?

A. If they break the bond, will you punish them for violation of its terms ?

Q. Yes.

A. I don't think that it will be effective.

Q. Then are you definitely of opinion that we may start with 14 years as the minimum age of marriage ?

A. I should be very glad if the members of the Legislative Assembly will agree to raise it to 14.

Mr. Bhargava : You say you have tried a number of cases of rape and seduction. What is the usual punishment that has been given in these cases ? Is it more than five years ?

A. I have given transportation for life.

Q. Is it in the cases where the girls were very tender or in other cases also ?

A. It depends upon all the attendant circumstances of the cases.

Q. Are you in favour of retaining the present punishment so far as the extra-marital cases are concerned ?

A. Yes.

Q. I suppose you will simply laugh at the idea if it is suggested that there should be only fines for rape cases.

A. Quite so.

Q. I am speaking of extra-marital cases now. In these cases of rape, what is the usual defence that is taken up ?

A. I remember a case of rape which was committed without the consent of a woman. I have not tried a case where it was a case of rape with consent.

Q. Your proposal now is that the age of consummation be raised to 14 within marriage. What objection have you got to raise it to 15 or 16 ?

A. I have no objection whatever.

Q. Suppose we don't succeed in having a marriage law and as you have said that you would like to have a consent law well according to your replies this law would be practically a dead letter so far as the conviction and the actual breaches of law are concerned. Is that not your opinion ?

A. Still it will have some educative effect.

Q. Are you in favour of keeping the right of complaint as it is now so that some sort of check may be exercised by the enemies and the neighbours on the offenders ?

A. Yes.

Q. I want to know your experience as to how the provision of Sec. 107 is working. Has not the administration of this provision been attended with success ?

A. Yes.

Q. I want to know whether you would have a provision like that contained in Sec. 107 so far as the marital cases are concerned. Will not that be effective ?

A. There is much in what you say. If you cannot increase the age of marriage, you can increase the age of consent.

Q. If we can have the marriage law so far so good but if we cannot have it and only a consent law is passed do you not think that a provision as that contained in Sec. 107 will do, to prevent such cases ?

A. Yes.

Q. Then again you say in para. 7 that the plea of religion is a mere cloak for upholding the present customs. What do you mean by this ?

A. That is only my way of saying that all talk of religion when you realise it, goes down to custom.

Q. So that in fact the enactment of such a law will not be contrary to religious susceptibilities. Is that correct ?

A. Yes.

Q. So far as the activities of the Government are concerned when there is a law, is it not the duty of the Government to make the law widely known and see that a proper atmosphere is created in which the law is not broken ?

A. If there is a law you will find that many young English magistrates will popularise the law.

Mr. Mudaliyar : Is there much of pre-puberty consummation in any part of Bengal ?

A. I must say that I have not much experience of it but I think that among the lower classes it is very common.

Q. It means that the present law is being infringed. Apart from a law fixing the age of marriage could you suggest anything to check that ?

A. I do not know if there is much of the infringement of the present law.

Q. You mean to say that pre-puberty consummation takes place amongst girls older than 13 ?

A. Puberty is a private and confidential matter ; how am I to know whether it is pre-puberty or post-puberty.

Q. Is it a practice here that as soon as a girl is married she is sent to the husband's house without consideration of the fact whether the girl has attained maturity or not ?

A. I should say generally as soon as the girl is big enough to be used sexually she is sent to the husband's house.

Q. When is a girl big enough to be used sexually. Has that any reference to the attainment of puberty or not ?

A. I should say there are people who never think of puberty but there mere thought is sexuality.

Q. What should be done to meet that position ?

A. Strengthen the law.

Q. How can the law be strengthened ?

A. By social propaganda.

Q. Is it not a fact that in those cases the law is being infringed ?

A. The present law has done a great deal of good.

Q. But in the illiterate classes and in the lower classes we were given to understand that the thing goes on irrespective of the law. Is that your impression ?

A. Common people follow the higher classes.

Q. Regarding extra-marital cases I understood you to say that you are agreeable to fixing the age at 18 ?

A. But not until the people or country are prepared for that.

Q. What sort of objection do you expect ? What is the difficulty you would like us to solve before fixing 18 in extra-marital cases ?

A. I do not know if many people will feel much about it.

Q. Wherefrom would the opposition come if we were to fix 18 as the age ?

A. I suppose it will come from a great many.

Q. From the brothel keepers ?

A. And the patronisers.

Mr. Mitra : You are for fixing a marriage age but certainly you know there are some orthodox people who are not opposed to consent law but who think that marriages should be performed before puberty is attained ?

A. Those who are so orthodox will oppose both and if you are afraid of those orthodox people you can do nothing.

Q. Do you think some exemptions should be provided for the people who are really orthodox and seriously think that they will break the law if it is enacted ?

A. No.

Q. Do you know that in the Presidency of Madras Brahamans celebrate marriage early but they do not allow consummation before puberty ?

A. I believe that was the custom in Bengal too but with western influence all things are in the melting pot. The age of marriage has been increased but the custom of keeping girls in their house has disappeared.

Q. Do even Shahs and rich people among them whom early marriages are practised, send their girls before puberty ?

A. I should say generally they do not send them till they are grown up.

Q. Do they care for the attainment of puberty ?

A. What is the use of sending her unless she is useful.

Q. So is it not the practice that when a girl attains 11th year or 12th year she is taken away by the husband's party ?

A. That may be.

Q. Do they not invariably follow the practice of consummation after puberty ?

A. This question is never discussed. There is no garbhadan ceremony. It is at least dying out in the educated classes.

Q. Do you think even in the so-called depressed classes this *punar vivah*, or garbhadan ceremony, is not performed ?

A. This ceremony has been cut down on account of economic reasons.

Q. It may not be celebrated with great *eclat* but it is performed as a *sanskara*.

A. I do not know.

Q. Your experience is confined to the towns ?

A. Yes.

Q. You cannot say much about the village life ?

A. No.

Q. Are you in favour of divorce law among the Hindus otherwise in marital cases there is hardly any chance of such cases coming to court.

A. Among the Hindus the husband may give up his wife and give her nothing but Rs. 5 for subsistence and he will get another wife into the house. When this is the position allotted to the wife you say she should have divorce law to remedy this.

Q. Are you against consent law in marital cases ?

A. I think consent law without marriage law is not likely to be effective and it will make the position of the girl very awkward. It will not be effective among the Hindus but among the Muhammadans it may be.

Q. But according to Hindu Law are the wives not entitled to maintenance if they are deserted by their husbands ?

A. They are but if a man earns Rs. 1,000 a month the girl will get a few rupees.

Pandit Kanhaiya Lal : In order to reduce the suffering to the wife would you recommend that marital cases might be allowed to be compounded so that good relations might be restored between the husband and the wife ?

A. What is the good of having this legislation if you allow compounding.

Q. Would you allow compounding with the sanction of the court in suitable cases ?

A. Yes.

Q. Should that be irrespective of the age of the girl ?

A. If you want to have efficient law you should prescribe an age before which no compounding should be allowed.

Q. Would you allow compounding before 12 ?

A. I would not allow compounding below 13.

Q. Have you got a system of registration of marriages as regards Muhammadans and Christians ?

A. In the case of Christians marriages are registered.

Q. Are Muhammadan marriages also registered.

A. It is optional registration.

Q. Can you tell us what percentage of Muhammadan marriages are registered ?

A. I cannot say.

Q. Suppose we have a law fixing the age of marriage would you be in favour of a system of registration of marriages giving the names of the marrying parties and their ages so that records might be kept and any man interested may ascertain whether the law has been broken or is likely to be broken ?

A. If you introduce registration of marriage, it will be very good.

Q. Who should keep these registers of marriages ?

A. Sub-registrars.

Q. The complaint is that sub-registrars are far away and people may be put to inconvenience. Would not the agency which is now doing the work of registering births and deaths do the work of registering marriages too ?

A. Births and deaths are registered in police thanas.

Q. Are you certain ? I am told that they are now registered by Union Boards ?

A. Yes.

Q. And union boards are more numerous than sub-registrars.

A. Yes.

Q. Then you have no objection to union boards' keeping these registers ?

A. No.

Q. Would you further recommend that as soon as a marriage is reported a free marriage certificate should be issued by the registering authority so that it may be preserved for future use, if necessary ?

A. Yes.

Q. On whom would you place the obligation of reporting these marriages—on the marrying parties and their guardians or on the priest ?

A. The obligation should be on the parents and the priests and all those who take part in the marriage.

Q. Another auxiliary suggestion has been made to support the marriage legislation that no student should be allowed to go up for the school final or matriculation examination after a certain period if he is married during or after that period ?

A. If I was a despotic tyrant of this country I would begin with saying that no person should be allowed to enter into Government service, if he is married and after entering service, if he married without permission, I would dismiss him summarily.

Q. In this case what might be done is that one or two years notice may be given that after a certain period he will be debarred from appearing in the examination.

A. It is very good but I would say that immediately it is found that a boy is married he should be expelled.

Q. Are you aware that in the case of one Province the U. P. this rule has already been put in force from 1930. Every boy who is married after the year 1928 will not be allowed to appear in the matriculation examination ?

A. I would expell him from the school.

Q. Should there be no exception in the case of boys who are already married ?

A. I am of this opinion that if a boy is married he should be expelled immediately. I would do that for colleges also.

Q. Would you not put down that it would be a disqualification for appearing in the examination ?

A. I would not disqualify but expel them.

Written Statement of Dr. J. N. MAITRA, M.B., Formerly M.L. C., Bengal, Dr. J. C. CHATTERJEA, L.M.S., F.R.S.M. (Lond.), Superintendent and Teacher of Midwifery, Calcutta Medical School, Dr. EKENDRA NATH GHOSH, M.D., Professor of Biology, Calcutta Medical College, Dr. NANILAL PAN, M.B., Professor of Anatomy, Calcutta Medical College, Dr. S. K. SEN GUPTA, B.A., L.M.S., Professor of Ophthalmology, Jatiya Ayurbijnan Vidyalaya and Others.

PREFACE.

This bill so far as it is concerned with the protection of girls from the sexual approach of strangers seems to be framed on the following principle. A girl before she completes her sixteenth year is supposed to be so immature in her "judgment" that she does not realise the full consequence of the sexual act on her future and hence her consent to the act cannot be a valid consent; and it proceeds on the supposition that a man is always the seducer and that a girl can never seduce a boy. Those who have some experience of the world, know that sometimes the man and sometimes the woman is the seducer. If it is claimed that woman requires protection owing to immaturity of her judgment, then it can be claimed with equal reason that our youths also require protection from the blandishments of women, especially in cities. School going boys and college youths are very often the victims of these women. They, not knowing the dangers of intercourse, fall a prey to the blandishments of the women of the town. Medical men have been telling me that venereal diseases are on the increase among the student population of Calcutta. It cannot be gainsaid that the students are immature in judgment and do not realise the full effect (venereal infections and its sequelae) of sexual intercourse on their future. Hence if protection is to be afforded to girls, the same protection should not be

denied to our boys. In both the cases immaturity of judgment is the reason for claiming such protection. We proceed to show that inconsistencies and absurdities will arise if effect is given to this principle.

There is a divergence of opinion as to the age when girls and youths may be considered to have reached maturity of judgment. Sir H. S. Gour opines that it shall be the 17th year, the ladies of Calcutta in a meeting at Albert Hall decided that it shall be the 19th year in the case of girls. It cannot be denied that boys reach maturity of judgment later than girls. Whichever may be the age at which girls may be considered to be mature in judgment we shall not err if we add 3 or 4 years to that age to find the age of maturity of judgment of the boys. If 16 years be fixed for girls, then 20 years may very well be fixed for boys. If 18 years be fixed for girls, then 21 years may be fixed for boys. Let us now consider the effect of fixing 16 and 20 years as the age of maturity respectively of girls and boys. If a man of over 20 years of age cohabits with a girl less than 16 years in age, he shall be punished. If a woman of over 16 years of age cohabits with a youth of less than 20 years of age, she shall be punished. So far it is clear and definite and this law will be just and equitable provided our premises as regards the age of maturity of judgment is correct. But a peculiar situation arises where both the parties are below their respective age of maturity. Whom to punish? If we think that both are immature it will not be proper to punish any of them. Neither, I hope, can we take it as children's play. This dilemma will be all the more manifest the higher we fix the age of maturity of judgment of girls. The much sought for protection to the girls will then cease to exist. The mother or foster-mother woman of the town will seek for boys to be the paramours of her girl. Therefore, this principle of maturity of judgment of the girl should not be adopted as the basis of fixing the age of consent. We have to fall back upon a physiological principle. Here we are on safer grounds and inconsistencies will disappear.

The principle we advocate, shall be the protection of the sexually immature girl and the age limit shall be such that a man seeking cohabitation with such a girl cannot but have doubts as to her maturity and may be presumed to have wilfully and knowingly embraced on immature girl. If 16 or 18 years be fixed as the age of consent, not only will it be physiologically incorrect but the man will have to decide, while under the influence of passion whether the girl is 15 years or over when the age is fixed at 16 years, or whether the girl is 17 years or over when the age is fixed at 18 years. It is quite possible for any man to mistake a girl of 15 years for 16, 17, 18 or 19 years. Medical men are hard put to it to decide the question with all their knowledge and all their dispassion.

A girl is physically fit for sexual intercourse when she has reached puberty; the local parts will not be lacerated in the act (except the tearing of a membrane which is normal in first cohabitation). The act will be still more easy when she is excited under the influence of passion as is the case when she is a willing party. The effect on the nervous system also will not be bad. All these presuppose that the girl is a willing and consenting party under the influence of sexual passion. The girl in this country generally reach puberty at 12th or 13th year and if we add one year more and make 14 years as the age of consent, it will meet the utmost that physiology demands. It must be understood that physiological maturity for cohabitation need not correspond to physiological maturity for maternity. Here we are considering the question of age at which intercourse may be physiologically permitted. The question of maturity for maternity does not arise, because in that case the Bill would have provided the same age for the married as for the unmarried girl. Seeing that the Bill as well as the opinions of ladies provide different ages for the married and unmarried girls, we draw the conclusion that they wish to fix the age of consent of the unmarried girl at a higher age than that of a married girl because of the question of maturity of "judgment."

If the age is fixed at 16 or 18 years, one cannot be sure of the reprehensibility of the man in as much as—

- (1) one cannot be sure who is the seducing party and who is the seduced party.

- (2) one cannot expect a man especially under the stress of passion—and more so, when the girl herself is also under the influence of the same passion, to decide whether the girl is above or below the age limit.

Some of these who wish for this Bill seem to be guided by some idea of serving the ends of sexual morality and therefore they wish to raise the age of consent (as against strangers) as high as possible. According to them the man is always the scoundrel and the woman is always the victim. Women, according to them, have no passion to satisfy. If a girl of 15 years has intercourse with a boy of 14, 15, 16, 17, 18 or 19 years, these good people will lay the blame on the shoulder of the boy. This is absurd. It will be still more absurd if the age of consent be fixed at 18 years. We should like to remind these well-meaning persons that it is not always possible to enact law to serve the ends of morality in such a way as to be equitable and just to the parties concerned. Very often, therefore, the Legislatures have to remain inactive and have to leave these questions to be settled gradually by the upraised moral sense of the community.

We now proceed to answer the questionnaire *Seriatim*.

Questionnaire Answered.

1. There is no general dissatisfaction. The persons who were dissatisfied belong to communities which will be unaffected by the provisions of this bill. Their dissatisfaction is moreover theoretical as they want changes not for their own communities but for others.

2. The Law should remain practically as it is at present, the penalty being somewhat modified. The history of age of consent bill shows that it was first, adopted to guard against physical injury to sexually immature girls by actual cohabitation. The proposal to extend the provisions of the bill to safeguard girls who are immature in "judgment" or are immature as regards maternity or to serve the ends of morality does not meet with our approval. This point has already been dealt with before in the preface and will be dealt with more fully in answering questions 9, 10, and 17.

3 and 4. Sufficient facts are not known; therefore the answers will be according to the predilection of persons for or against the bill.

5. Generally after 11 years and before 13 years. Healthier girls in the villages belonging to the lower classes generally reach puberty a little earlier.

6. (i) No, (ii) Not common among educated classes, (iii) No facts available.

7. Consummation of marriage after puberty has religious sanction. We have not heard that consummation before puberty has any such sanction.

8. Garbhadan ceremony ("second marriage") is usual and it is performed as soon as possible after puberty. Consummation in the sense of vaginal penetration does not occur before the ceremony. Where it occurs, it occurs generally after the ceremony.

9. Yes. Attainment of puberty is no doubt an indication of physical maturity and we cannot condemn consummation of marriage if it takes place after puberty is reached. While justifying cohabitation, we cannot "fully" justify maternity. Cohabitation is not synonymous with maternity. If an ordinary healthy girl conceives after puberty, pregnancy is not fraught with such dangers as is usually apprehended by Western and Westernised people. It is the frequent repetition of pregnancies at short interval which undermines the health of a girl. If a girl becomes pregnant at 13 years and again conceives at 17 years, i.e., at 4 years interval, then no danger to her health need be apprehended. On the other hand, even if a girl conceives for the first time at 17 years, and gets pregnant every year or every two years, then her health will be shattered. We justify consummation still more strongly if it takes place one year after reaching puberty. The important points to be remembered are—

(i) that the girl has ordinary health,

(ii) that she has at least attained puberty, better so if one year has passed since then.

(iii) that the interval between pregnancies is not too short.

In the light of the above, let us consider the following points :—

- (a) danger of first intercourse....*Nil* (*vide* answer to questions 10 and 11),
- (b) danger to mother or foetus during pregnancy....No special danger,
- (c) danger during child-birth....The child of a young mother is in many cases small and no exceptional trouble arises. Those who speak glibly about the dangers at delivery should submit statistics of "all" normal and difficult labour cases they have attained—preferably in the appended form (Appendix A). Even this may to some extent mislead, as medical men are called in only in difficult cases. We may here state that grave dangers are faced by all mothers at the time of delivery,—the insanitary surroundings, ignorant *dhais* and ignorant old women all contributing their quota of risk and danger to the mother and child.
- (d) After care of mother and infant ;—the same thing can be said as before. In common with older primiparae, the young mother is inexperienced, but owing to her youth, she may be unable to take care of her infant as an older girl might have done. But we find generally that an old woman stays with the mother at the delivery cottage.

Now we revert to what we said as regards cohabitation being not synonymous with maternity. In those communities in whom early marriage is prevalent, cohabitation no doubt takes place soon after puberty ; but strange to say, the girls generally do not become mothers before they are 15 or 16 years old ; whereas among the higher castes if a girl is married at 14, she generally becomes a mother one year or 18 months after marriage. Again the children, as for example, of Gondas or Namasudras in whom child marriages are prevalent have generally more vitality and stamina than the children of those classes in whom adult marriage is prevalent,—only the children of extremely poor people and of those belonging to parts of the country where malaria prevails being weaker. This shows that there are other factors working which are more potent than the factor of age of the mother. The smaller size of the child is suggestive of low vitality but it is not so generally.

10. Age is no criterion. At no age will a girl be able to give intelligent consent to cohabitation with the due realisation of "all" consequences, unless she is educated and thoroughly instructed in these matters, or otherwise fully informed. The consequences are many and various and with average intelligence and powers of observation, she may be able to realise only one or two of them. If she had previous experience of cohabitation, she may be able to understand a few more. We are afraid this question was not framed with a due realisation of its meaning. We divide the girls into four groups :—

- | | |
|--|--------------------------------|
| (A) Unmarried girls in Samaj | } having no sexual experience. |
| (B) Married girls in Samaj | |
| (C) Girls outside Samaj (daughters of prostitutes) | |
| (D) Sexually experienced girls | |

The following are some of the consequences of co-habitation :—

- i. Physical injury A, B and C never realise.
- ii. Mental shock A, B and C never realise.
- iii. Venereal infections C may realise at 13 years and over. A and B never realise, D may realise after infection,
- iv. Pregnancy—
 - (a) First pregnancy and its risks A and B never realise.
 - (b) Subsequent pregnancy and its risks D after motherhood may occasionally.

v. Child-birth—

Risk to mother—

usual	} pain at 13 years by all groups.
unusual	

Risk to infant—

usual	} None of the groups except D can realise.
unusual	

vi. Dangers due to poverty and ignorance during pregnancy, delivery or afterwards

None except group D after motherhood occasionally.

vii. Economic difficulties in rearing up children

Group D after motherhood.

viii. Social degradation if detected in extra-marital intercourse

A, B and D realise it on attainment of puberty but before that may only realise that the act is reprehensible.

(Group C is already outside pale of society).

ix. Curability of chlorosis and some cases of Dysmenorrhœa

None of the group realise.

11. We have never seen or heard of any case where post-pubertal intercourse has caused actual physical injury except in cases where the parts concerned were diseased or abnormally developed. In the unusual case where the male organ is extraordinarily large, attempt at thorough penetration is likely to cause injury. This is true even where the woman is an adult. Instances are not unknown of veteran prostitutes refusing to entertain such males.

We have seen cases of infection due to post as well as pre-pubertal intercourse. We know there are reported cases of actual physical injury, occasionally leading to death following pre-pubertal congress. But vestibular contact even in pre-pubertal cases cannot cause injury.

12. Post-pubertal consummation has, as we have said, no effect in causing physical injury. In this question the words "early consummation" appear to be hardly relevant.

It is our considered opinion that early maternity is not responsible for "high maternal and infantile mortality." Venereal infections, poverty, ignorance and frequent pregnancies are more often the most potent factors in causing high maternal and infantile mortality,—the age of the girl mother—specially if she has completed a 14th year being a negligible factor in comparison. This supposes that the health of the girl mother is normal. If a girl, whatever her age, the ailing from frequent attacks of malaria or from tuberculosis or other anaemia producing illnesses then pregnancy is dangerous.

Early marriage has the effect of hindering the education of girls. Anxieties and worries of motherhood enter too early into the joyous and care-free life of a girl.

13. It is too early to expect any change in the angle of vision of people. A few ladies and gentlemen wish for further extension, not for any urgent necessity but in their zeal for social reform.

14. Generally yes—but post-pubertal only. Educated mothers do not like early marriage.

15. Medical jurists always find it very difficult to definitely fix the age of a girl. The most effective measure would be to have compulsory registration of births.

16. No age can be definitely fixed by medical examination. The only ages about which medical jurists may be somewhat definite is 12 years and 16 years.

17. Yes. In marital offences if the girl be not less than 13 years old, the maximum punishment should be only a fine—the amount not to exceed Rs. 50..

The educated and higher castes will not be affected as in them the marriageable age of girls is 14 years or above. It is the poor and ignorant classes in whom such offences are likely to take place and a fine which may reach upto Rs. 50 would be quite heavy for them.

In extra-marital offence if the girl be not less than 13 years, the maximum punishment should be a fine of Rs. 250 only. In these offences, we think that the punishment which is provided at present is inequitable and unduly severe. It is a misnomer to call these cases, cases of rape. All the elements which rightly make rape a heinous offence are absent. Let us consider the cases which may fall under this heading—remembering always that the girl is a willing consenting party to the sexual act.

(a) Unmarried girls in Samaj belonging to communities in which the girls are married at a higher age;—when a girl reaches puberty, her mother teaches her to take care of her person. If the mother does not care to give the training or in spite of such training, the girls submit to intercourse willingly, then the fault lies with the mother or guardians, or it may be due to the perversity of girl herself or to her sex-urge; moreover the partner is generally a boy of the same age as or of slightly higher age than that of the girl. The few cases which have come to our notice have been of this nature and it is very difficult to say who seduces whom. We would like that the boys of about the same age as that of the girl should be entirely exempt from the operation of this bill. Those who are for frightful punishment seem to think that the culprit is always an old sinner and they forget that their own immature sons may be tempted and may fall. We would ask them to read Judge Lindsey's book on "The Revolt of Youth", page 260. An irate father coming to learn that his unmarried daughter was with child, asked Judge Lindsey to send the boy to the penitentiary for life as the girl was below 18; it was later on found that his son has done the same wrong to another person's daughter.

(b) Married girls and widows of Samaj;—some of these leave the protection of home owing to—

- (i) bad treatment received,
- (ii) passionate nature which requires satisfaction,
- (iii) glamour of having a good time and independence.

In all these cases, other sections of the Penal Code are also available for punishing the abductor.

(c) Girls outside Samaj, such as daughters and foster-daughters of women of the town;—they require protection from their mothers. The law at the utmost may postpone the evil day for these girls but can by no means protect them for evermore, unless their position becomes economically independent of the mother. The Suppression of Immoral Traffic Act in Bengal will have the effect of creating demi-mondaines at public cost. The chance of their entering society is very small, whereas there is some chance of their being "really" married at the instance and expense of their mothers. However high the age may be fixed, however frightful the punishment that may be inflicted, no real protection can be given to these girls as, at no age, will they be in a position to resist the insistence of the mother, nor can they be absorbed in society. Frightfulness will not serve the end we have in view. In these cases we would have liked the mother of the girl to be punished equally with the man, as if she has also committed the substantive offence. Moreover immature boys of wealthy parents might be tempted by the mother of the girl to have intercourse with such a girl with a view to blackmail the parents.

N.B.—We feel that the offences relating to sexual intercourse with girls above 13 years—whether intra- or extra-marital—should not be grouped with rape. The elements of criminality and heinousness which justly makes rape such a serious offence, are absent. Force, threat, and deceit are absent. The question of injury to the girl, immediate and remote remains. There is no likelihood of immediate injury. The remote injuries, if any at all, are concerned with maternity,—injury to the girl by pregnancy and childbirth or injury to the infant. These, to say the

least, are problematical and doubtful, and are not so sure or so inevitable as to enable us to make an un rebuttable presumption of the criminality of the act or of the man. The amount and nature of injury to mother and child as an effect of the age of the mother, especially when she is in her fifteenth year is not scientifically known. We have sent a challenge (Appendix B) to the ladies and gentlemen (Appendix C) to bring forward any logical and scientific proofs which they may happen to possess. We are afraid that such proofs will not be forthcoming. We would, therefore, press for a commission of scientific men and statisticians to determine this, as well as to assess the amount and nature of injury on the mother and child due to (i) poverty, (ii) ignorance, (iii) venereal infections, (iv) malaria, and (v) frequent pregnancies at short intervals. If these are determined, we may be able to understand the urgency, or necessity, or otherwise of legislation on the lines proposed by Sir H. S. Gour. It is proposed to make this "offence" punishable by 2 years' rigorous imprisonment, if intra-marital or punishable by 10 years' rigorous imprisonment or transportation for life, if extra-marital, without any consideration as to the actual injury done to the girl or her offspring. It is more ridiculous than punishing a person for murder if he raises his fist—irrespective of whether he has caused any actual injury or death to anybody. The question of social degradation has been already dealt with—even a girl of 12 years knows the heinousness of intimacy with men, and on attainment of puberty, a girl understands the social degradation involved if found out. When a girl of above 13 years has cohabitation with a boy or a man, she is to a very great extent induced by a sexual urge and she thinks her act is done so secretly that she will not be found out. An enlightened mother may sometimes keep her grown up daughter in ignorance, wishing to keep her in pristine innocence. If owing to this foolishness and thoughtlessness on her part the girl does not imbibe the tradition or the sense of modesty, or does not learn the necessity for protecting her person, is it fair that the duty and the burden of protecting her shall be shifted to the shoulder of boys equally innocent of the heinousness of sexual intercourse because carefully nurtured by equally enlightened and responsible (!) parents?

We are, therefore, of opinion that the punishment for these so-called offences is inequitable, unjust and unduly severe.

20. The alternatives will be equally effective or equally ineffective. None of the alternatives are in consonance with public opinion.

21. Education and social propaganda are "the" means which are likely to be effective. If the communities in which "Kanyapana" and therefore child marriage is prevalent, be persuaded to do adopt widow remarriage, then these questions will be solved in the best way possible. In many of these, owing to want of girls widow remarriage was prevalent some 30 or 40 years ago but many of them have given it up by trying to imitate the ways of higher castes. Widow remarriage has no economic advantage and therefore will not become prevalent so long as "Barapana" persists. If the educated persons of the "Kanyapana" communities will take up the question in right earnest, widow remarriage will soon become prevalent and as a consequence, child marriage will become rare. We are glad to note that Namasudras have taken it up and many widow remarriages have taken place among them. If the members of the higher castes go for propaganda work among the common masses the mass will retort "remarry your widows first, and then we will follow suit." They will not understand that the situation is otherwise with the higher castes owing to the prevalence of "Barapana." So the immediate work of the higher castes will be to convert the educated people of the "Kanyapana" castes to the remarriage of widows. This is the immediate practical work which should be taken up.

Another piece of work is that no married girl should be sent to live with her husband, before she reaches puberty. This was all but universal but some communities have given it up in the spirit and are keeping it only in the letter. Propaganda work should be taken up to instruct and help people in the proper care of girls and infants during pregnancy, labour, puerperium and lactation.

SUMMARY.

I. Intra-marital and extra-marital age of consent shall be the same.

II. Fourteen years shall be the age of consent. We would have liked to keep the law as it is but in addition to the reasons previously advanced, our intense desire that the age of consent shall be the same in intra- and extra-marital cases, has prompted us to make the intra-marital age of consent the same as that of extra-marital.

III. Penalties :—

Intra-marital—

- | | |
|--|-----------------------------------|
| girl below 12 years | full penalty for rape. |
| girl above 12 but below 13 years | two years' rigorous imprisonment. |
| girl above 13 but below age of consent | fine of Rs. 50. |

Extra-marital—

- | | |
|--|------------------------|
| girl below 13 years | full penalty for rape. |
| girl above 13 but below age of consent | fine of Rs. 250. |

IV. Exemptions :—

- (a) Certain boys should be exempted from the operation of the consent clause. Add 2 years to the age consent to find the age of the boy ; a boy below this age shall be exempted.
- (b) If the age of consent be fixed at a higher age than 14 years, and if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe (from appearance, manners, etc.) that the girl was at the age of consent or above then consent shall be accepted as a good defence.
- (c) A boy under 14 years is to be presumed in law to be incapable of committing rape. This presumption shall not be rebuttable.

V. Before it is settled to increase the age of consent a commission of experts should be appointed to investigate and determine the amount and nature of danger and injury to the mother and the infant due to the age of the mother.

CONCLUSION.

We are prepared to give oral evidence before the Age of Consent Committee to elucidate any of the points, and place before the Committee any proofs which we may have been able to collect in support of our contentions.

APPENDIX (A.)

N.B.—Care should be taken in compiling these statistics as since the passing of the Act of 1925, girls who were really less than 14 years of age, might have been falsely passed off as of higher age. Statistics of cases before 1925 would therefore be more important than that of later period. Please mention the period covered by your statistics.

1. Total number of deliveries below 14 years (i.e., girls conceiving at an age not higher than about 13 years—

No. of normal labour—

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

No. of difficult labour —

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

(Mention the nature of difficulty and the previous health of the mother).

2. Total No. of deliveries in girls of age above 14 years but below 15 years (*i.e.*, girls conceiving at the age of 13 years—the present age of intra-marital consent)—

No. of normal labour—

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

No. of difficult labour—

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

(Please mention nature of difficulty and the previous health of the mother).

3. Total No. of deliveries in girls of age above 15 years but below 16 years (*i.e.*, girls conceiving at the age of 14 years—the proposed age of intra-marital consent)—

No. of normal labour—

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

No. of difficult labour—

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

(Please mention nature of difficulty and the previous health of the mother).

4. Total No. of deliveries in girls of the age of 16 years or above—

No. of normal labour—

Primipara

Result to mother

Result to infant

No. of normal labour—

Multipara

Result to mother

Result to infant

No. of difficult labour—

Primipara

Result to mother

Result to infant

Multipara

Result to mother

Result to infant

(Please mention the nature of difficulty and the previous health of the mother.)

APPENDIX (B.) SOCIAL LEGISLATION.

A CHALLENGE.

To the Editor, "The Basumati."

Sir,—On those persons who desire extension of the criminal law on the lines of Sir H. S. Gour's Bill lies the burden of proving that consummation of marriage with a girl during her fourteenth year is *per se* dangerous to the girl or that it is almost sure to be followed by pregnancy and that maternity at the fifteenth year is so inevitably dangerous to the mother or the child that an un rebuttable presumption can be made that the husband has knowingly endangered human life by such consummation or that the husband can be presumed to be responsible being expected to know the natural consequence of his act.

It seems to us that if the above proofs are not forthcoming then to make the husband punishable by two years' rigorous imprisonment or the stranger punishable by 10 years' rigorous imprisonment because cohabitation has taken place earlier than the ages proposed by Sir H. S. Gour is to say the least more ridiculous than punishing a person for murder because he has raised his fist to strike irrespective of whether he has caused any actual injury or has killed anybody.

The public are under the false impression that incontrovertible medical proofs exist and they mistake "a priori" reasonings for proper scientific proofs. We challenge all persons both medical and lay to deal with the question of maternal and infantile mortality in a scientific and not in a slipshod manner. In advancing the proofs sight must not be lost of control observations:—it is necessary that the form appended to this letter should be properly filled in; observations as to the history of a sufficient number of families in whom child marriage is prevalent should be compared with the observations as to the history of a sufficient number of Bengalee families in whom adult marriage is prevalent; proper statistics should be taken to show the comparative effects of poverty and ignorance (on one side) and of child maternity (on the other side) on maternal and infantile mortality. Effect of venereal diseases or of malaria should also be compared with the effect of child maternity.

In the absence of proper proofs facts and figures we are not prepared to accept the "a priori" reasons and "ipse dixit" of any man however eminent he may be. In their desire that a girl shall not be a mother before she is sixteen—with which desire we have entire sympathy—many persons are unable to see what sort of proof is necessary to justify a criminal law. The funniest thing is when a person gives as proof one or two cases of danger he has met with forgetting that the so-called proof is demolished when another person shows that he has seen not only no danger but child and mother doing quite well in many cases. They forget that a sufficient number of cases of girl and adult primipara must be taken where all the other circumstances are the same. If such cases are not available one shall have to fall upon the method of differences.

Will the reformers both medical and lay supply the requisite proofs to the Age of Consent Committee?

Yours etc.,

SASI KUMAR SEN GUPTA, B.A., L.M.S.

4-1B, Beadon Street, Calcutta, the 7th November 1928.

APPENDIX.

N.B.—Care should be taken in comparing these statistics as since the passing of the Act of 1925 girls who were really less than 14 years of age might have been falsely passed off as of higher age. Statistics of cases before 1925 would therefore be more important than that of later period. Please mention the period covered by your statistics. In all difficult labour or mortality cases please mention nature of the difficulty, the previous health of the mother or the cause of mortality.

I. Total number of deliveries below 14 years (*i.e.*, girls conceiving at an age not higher than about 13 years).

Number of normal labour—Primipara: Result to mother, Result to infant, Multipara: Result to mother, Result to infant.

Number of difficult labour—Primipara: Result to mother, Result to infant, Multipara: Result to mother, Result to infant.

II. Total number of deliveries in girls of age above 14 years but below 15 years (*i.e.*, girls conceiving at the age of 13 years—the present age of intra-marital consent).

The same statistics with reference to normal and difficult labour divided into primipara and multipara with results to mother and infant as shown under I.

III. Total number of deliveries in girls of age above 15 years but below 16 years (*i.e.*, girls conceiving at the age of 14 years—the proposed age of intra-marital consent):

The same statistics as mentioned under I and II.

IV. Total number of deliveries in girls of the age of 16 years and above:

The same statistics as mentioned under I, II and III.

APPENDIX (C.)

Teacher of Midwifery, Dacca Medical School, Dacca.

Teacher of Midwifery, Burdwan Medical School, Burdwan.

Dr. J. M. Das, 1, Harrington Street, Calcutta.

Dr. D. R. Das, 7-1, Harrison Road, Calcutta.

To the Editor, Indian Medical Gazette, 3, Esplanade East, Calcutta.

To the Editor, Medical Review of Reviews, 48, Wellington Street, Calcutta.

Dr. Sundari Mohan Das, 109, Upper Circular Road, Calcutta.

Dr. G. Stepleton, 1, Amherst Street, Calcutta.

Dr. Narendra Nath Bose, 7, Raybagan Street, Calcutta.

Dr. Satinath Bagchi, 12, Sitaram Ghosh Street, Calcutta.

To the Teacher of Midwifery, Mymensingh Medical School, Mymensingh.

Dr. Kedar Nath Dass, 22, Bethune Row, Calcutta.

To the Editor, Prabashi, 91, Upper Circular Road, Calcutta.

To the Editor of Amrita Bazar Patrika, Ananda Chatterjee Lane, off Bagbazar Street, Calcutta.

To the Editor, Bichitra, Pataldanga Street, Calcutta.

To the Editor, Bharatbarsha, 203-1-1, Cornwallis Street, Calcutta.

To the Editor, Calcutta Medical Journal, 62, Bowbazar Street, Calcutta.

To the Editor, Forward, 19, British Indian Street, Calcutta.

Lady Pratima Mitra, 5, Outram Street, Calcutta.

To the Editor, Bengali, 9, Dhuramtala Street, Calcutta.

Mrs. Sarkar, Lady Principal, Maharani School, Darjeeling.

To the Secretary, Bar Association, Midnapur.

Babu, Dinanath Chowdhury, B.L.

President, Bar Association, Mymensingh.

President, Bar Association, Barisal.

Sj. Kalipada Chatterjee, President, Malda Bar Association, Malda.

Babu Jogindra Ch. Chakrabarty, M.A., B.L., M.L.C., Dinajpur.

APPENDIX (D.)

Letter, dated 17th November 1928, from Dr. Sateshwar Mukherjee and Dr. Nabajiban Benerji to Dr. S. K. Sen Gupta.

We are in favour of increasing the extra-marital age of consent of the girl to 18 years on condition that a boy below 17 years should not be punishable if any intercourse takes place between such a boy and a girl below 16 years. In case the Legislature is not willing to exempt such boys from the operation of this bill, we would like that the extra-marital age of consent should not be raised to 16 years.

Oral Evidence of Dr. S. K. SEN GUPTA, B.A., L.M.S., Professor of Ophthalmology, Jatiya Aurbijnan Vidyalaya, and Dr. J. C. CHATTERJEE, L.M.S.

(Calcutta, 21st December 1928.)

Chairman: Do I understand that this answer to the questionnaire has been prepared by five gentlemen and signed by so many people?

A. It has been prepared mainly by myself but there were the others who helped me.

Q. I see from your answer that you think that question No. 10 is ill-conceived. I will give you the reason underlying this question. There are some people who hold that there should be a distinction drawn between within marriage and outside marriage cases. They also think that one of the elements which should distinguish intra-marital and extra-marital cases is the question of intelligent consent. In the case of a husband they say a girl can surrender her person whether she can think of the consequences or not, but in the case of extra-marital relations, they say, intelligent consent ought to be one of the factors, at any rate, which should be considered along with the physiological factor. In order to give scope to them to prove what they say this question was framed.

A. My point is we have been put to great difficulty in answering the questions. We could have answered them in a much better way if the questions had been grouped in the four headings: necessity of legislation, urgency of it, equity and feasibility. About equity and feasibility there are certain questions. As regards the urgency and necessity of it from the medical point of view it has been so confused that it has been very difficult to answer the questions in the proper way.

Q. But you are now convinced that question does not pre-suppose any view on our part?

A. But what you have explained does not meet my objection. We have to find out the actual medical danger involved in consummation or in maternity between 13 and 14. These are the medical questions which have to be thrashed out and we have to see how many girls are married and have cohabitation between 13 and 14 and what is the percentage of maternity among them. There may have been thousand girls married but the percentage of maternity might have been 5. Then

the whole necessity and urgency of legislation goes away at once. That is the first point. The second point is what is the age of puberty. It is different in different places and even in different families.

Q. You may have a certain view of framing the questions, but could you tell us for instance what is it that you cannot answer under these questions?

A. Under what question can we answer or rather deal with the fact of the proportion of girls who have cohabitation between 13 and 14 and become pregnant at that age?

Q. Questions Nos. 9, 10, 11 and 12 exhaust the medical aspect of the question.

Mr. Bhargava : But could anybody give these statistics? There are absolutely no statistics of that kind in India.

Dr. Beadon : We have made investigations and found out that 6 per cent. of the girls have babies upto 14 complete.

A. We have got statistics which show that the percentage between 13 and 14 is about 2.5. That is the information gathered from the Baldev Das Maternity Home. But as to how many girls become pregnant between 13 and 14 those statistics are not available and there has been no attempt to get those figures.

Q. We are trying to get all sorts of figures. We are trying to get figures from all medical and health officers. In this statement you have confined yourself to the age of consent but strangely enough you have said in your answer to question No. 20 that 'both the alternatives will be equally effective or equally ineffective.' I hope you will be convinced that the law of marriage would certainly be more effective.

A. It will be very difficult to find out the exact age. Even those entering Government service want to show their age less.

Q. But we have to see whether the law of marriage if it is made would be more effective than the age of consent or not? That difficulty of ascertaining the age is common to every law where the age is concerned.

A. But here the difficulty would be still greater as there will be the intention of the relatives not to give the correct age at all. The age of the girl would be given to be more than it would be. They will all unite.

Q. When there is a difficulty in a court of law, they take evidence and they have to determine the age. They take the birth register, the school register and the horoscope and they have to come to some conclusion.

A. In both cases we shall have to prove the existence of the evil.

Q. That is right but what I mean to say is that in the case of age of consent there will be additional difficulty. No parent will go against the son-in-law.

A. The difficulty of age will be there also.

Q. Government has fixed a certain age for Government appointments. It does happen that sometimes the people give an advanced age and sometimes they give a smaller age. But does that show that the Government should not fix any age?

Mr. Mudaliyar : Or that we are a nation of liars and will always give a wrong age.

A. We are only 26 lakhs who belong to the higher castes but those who belong to the lower classes are about 182 lakhs. Some of them are touchables and some of them are untouchables. Among all these 182 lakhs child-marriage is prevalent. They have got the custom of 'Kanyapan'. The higher the age of the girl the more they will have to pay and if you raise the age by legislation you are practically telling them either remain unmarried or pay more.

Mr. Mitra : Are you not exaggerating when you say that there is 'Kanyapan' in these 182 lakhs of people? The President of the Namshudra Conference came to give evidence and he said that there was no 'Kanyapan' among them. Do not say what is not a fact.

A. In my part of the country there is 'Kanyapan' (At this stage Dr. J. C. Chatterjee, L.M.S., F.R.S.M., also came in).

Chairman : In your preface you say, a girl is physically fit for sexual intercourse when she has reached puberty, the local parts will not be lacerated in the act (except the tearing of the membrane which is normal in first cohabitation. What is your authority for that ?

A. We have not met with any case of physical injury to the girl where there has been sexual intercourse after puberty except where the male part is disproportionately large which is very rare.

Q. Do you deal with gynæcological cases ?

A. I have got friends who deal with those cases.

Q. So what you say is your experience or is there any medical authority for that ?

A. (By Dr. Chatterjee) The medical definition of menstruation is that the girl is physiologically fit for conception when she has reached puberty. There is a certain amount of awakening of sexual feeling in her when puberty appears. Menstruation is the signal of the girl being physiologically capable of conception and child-birth.

Q. But there are cases of conception before puberty ?

A. These are cases where conception has taken place in the premenstrual congestion period before first menstruation is possible. There may be ovaritis and there may be no menstruation although it is possible that the girl may be capable of bearing children.

Q. So that there is no harm in maternity as soon as puberty comes on.

A. Anything which is physiologically possible, there is no harm in that.

Q. If the girl menstruates at 8, 9 or 10 is she capable of conception ?

A. There are no recorded cases of that. Those are cases in which the girl is more precocious.

Q. That she is physically fit, have you got any authority for that ?

A. Anybody who knows A. B. C. of midwifery will be able to tell you that.

Q. So is that your experience ?

A. You can refer for authority to Johnston's book on Midwifery.

Q. The effect on the nervous system will not be bad. Is that medical opinion or your personal experience ?

A. When there is puberty there is the awakening of the sexual feeling and the effect on the nervous system cannot be bad.

Q. Is that medical authority or your experience ?

A. Unless it is a case of rape the effect on the nervous system will not be bad. In a case where the wife is not a willing party that corresponds to rape. If there is sufficient awakening in the girl there will be no harm.

Q. But you said puberty is the only test.

A. All this presupposes that the girl is a willing party.

Q. But there are many cases in which there is no question of consent between the husband and the wife. If she is not a willing party is the nervous system, shocked ?

A. As regards cases where the husband forces the wife, we do not know definitely whether there are many cases or a few cases.

Dr. Beadon : A case was given to us of a girl who was married at 13 and consummation took place at 15. This was given to us by the father of the girl herself. The girl was most unwilling. She had to go very reluctantly and the poor girl died as a result. These cases have been reported to us over and over again.

A. There are differences between European and Indian people.

Q. That was an Indian girl.

A. The effect on the nervous system may or may not be bad. It depends upon other factors.

Q. There are many cases of girls attaining puberty before 11, 12 and 13. Do you consider they are fit to start motherhood? You say that the girl becomes capable of producing children after puberty. Do you think that she would be safe for motherhood?

A. These two are different points altogether. By saying that I do not mean to say that a girl should become a mother as soon as she attains puberty?

Q. Question 9 refers to consummation only. Questions 11 and 12 refer to maternity. Mere co-habitation after puberty may or may not be dangerous. What we are concerned with is how to postpone maternity, not marriage, Saptapadi or co-habitation.

A. The point is whether maternity is desirable at that age or not. In our opinion the production of a strong and sturdy race does not depend upon early maternity alone, but upon the frequency of child births. Supposing a girl becomes a mother at 14, there should be stringent laws to see that she does not get children at very frequent intervals.

Q. Nobody says that early maternity is the only cause of the degeneration of the race. It may be one of the causes. The potency of the cause is to be determined, compared with other causes like bad light, bad feeding, poverty and other things. Now have you any information about a girl who has become a mother at 13 or 14; another girl who has become a mother at 17 or 18, the other circumstances being the same in both the cases, and there is the same frequency in child-births, namely, one year. Have you any experience of any such cases?

A. The mother at 13 or 14 will suffer more, because she will be less developed than the girl of 17 or 18. As a matter of fact anatomically girls will not be fully developed before they are 25.

Q. Can you tell us whether maternity at 13 or 14 will be safe for the girl and her progeny?

A. If the Government can find out some method by which antenatal care can be taken, a girl of 13 would be as safe for motherhood as a girl of 17. There should also be some punishment provided for cases in which girls become pregnant within three years of the previous child birth.

Q. Is there such legislation in any country in the world?

A. We ought to save our own country whatever laws might or might not be prevalent in other countries.

Q. Do you think it is possible to make legislation like that?

A. Your legislation is not also possible. There is no power on earth which will be able to stand against nature.

Mr. S. K. Sen-Gupta : I have got here some statistics which I will explain to you. Here there is a girl who was married when she was 13, got her first child when she was 14. She had 11 children 3 of them are living and 8 are dead. Afterwards she died. Her husband married again. I mean to say that she got 11 children within a period of 15 years. There is another case. The girl was married at 11. She got her first child when she was 18. She had 7 children in a period of 11 years. She died and 5 of the children died. One cannot generalise from these cases, but it appears that whether a girl has children at 14 or 18, the result is the same.

Q. Do you not realise that the information is too meagre for anybody to draw any conclusions from?

A. I myself admitted that one cannot generalise from these figures.

Q. Have you any experience of gynaecological cases?

A. I have not got any personal experience.

Q. Would you be able to say whether we can find any book on medicine in which the effect on a girl mother at 13 and another who has started motherhood at 18—all other things being equal—are given?

A. I do not know if they have compared it like that, because unless there has been necessity they would not have compared it. Probably you will get enough comparison in good time because the necessity has arisen.

Q. Can you tell us from your personal experience of cases in which a girl started motherhood at 13, and another at 18, other conditions being the same, whether there is or there is not any difference between them?

A. There are many cases in which there is no difference whatsoever. The following figures will show you what I mean:

Statistics of cases of girls aged about 12 to 14 becoming mothers for the first time and getting frequent pregnancies.

Married at	First child at	No. of children.	REMARKS.
11	13	13	General health of children good except two.
11	14	14	2 died from cholera. Others are living and well except 4th 5th. Mother still living and 65 years old.
11	14	10	3 children died. The present age of the lady is 60.
11	13	11	2 children died. Present age of the lady 41.
11	14	7	now aged 34, living.
9	14	9	Lady died when she was 71.
8	12	14	Her health is good. Children's health is good. 3 died in infancy. The health of the other children is good. She is now 59 and living.
7	13	18	No infantile death. All the children quite good. She died at 70.

Mr. A. Ramaswami Mudaliar: Does not all these show that your theory that frequency of child births is an evil is not correct.

A. But we do not know at what intervals the child births took place. These figures refer to only one family. I am giving figures to show that it is unusual for a lady to give birth to so many children.

Q. Can you give us the cases of mothers who died at the first child birth?

A. Let us understand the importance of the evil, how far it is an evil and how far it is not an evil. There might be some evil in it, but not much evil as it is sought to be made out. I do not think the evil is such as to require a canon to kill it.

Q. Have you got an idea of the frequency in all these cases?

A. You can form some idea of the frequency by taking the period in which the number of children were born.

Q. What is the conclusion you want to arrive at from these?

A. What we want to do is to bring to your notice the facts which we have collected so that you might compare it with the other statistics which you might have on the subject. If you think that the evidence is not sufficient then

you will have to employ a man to collect the necessary statistics by going into each and every family and collect data.

Q. We agree with you that statistics must be collected on a scientific basis for us to prove whether early maternity is an evil of primary importance or not. We agree that there are other factors.

A. The question is what evidence are we going to collect. I have come to help you to understand the whole medical basis of the thing. I am giving you certain figures from which I do not say that you can draw any inference, but I suggest that an enquiry should be made. You have got the evidence given by the reformers. If anybody wants some change in the law the burden of showing the necessity for it lies on them. They have not given us any evidence whatsoever. Nor the evidence we have given point to much, but it points to the other way.

Chairman : We have got the figures given us by the Assistant Director of Health, Madras. We sent it to you with the object that it may be sifted by you.

A. Has it dealt with every case ?

Q. Yes ; it deals with frequency of child-birth, difficulty and weight of children.

A. Does it deal with other factors ? for instance one might have malaria and other diseases. I shall look into the report and see if it supplies the necessary evidence.

Q. In your para. 9 you say that by justifying co-habitation we cannot fully justify maternity. What do you mean ?

A. I mean that we cannot say as a universal proposition that maternity as soon as a girl has attained puberty is desirable.

Q. There are two parts in that para, namely, how long after puberty may a girl's physical development be considered fit to justify consummation, and the second part is, how long after puberty may the girl's development be considered enough to justify consummation without injury to herself and her progeny. The first part refers to consummation of marriage merely.

A. But in the latter part you bring in both consummation and maternity.

Q. You say that if an ordinary healthy girl conceives after puberty pregnancy is not fraught with such dangers as is usually apprehended. We want this to be either supported or contradicted. We want to see whether we can find any support either for or against it.

A. There are other records also in connection with the frequency of pregnancy.

Q. If you can send us the Doctor who you say has compiled these figures we shall be glad to take the records from him.

A. I shall try to do so. He is in the Health Department of the Corporation.

Q. In para. 12 you say that it is your considered opinion that early maternity is not responsible for high maternal and infantile mortality. There are other people who say that it is not safe where all the other factors are the same.

A. If you go to the Public Health Exhibition in the Exhibition grounds at the Park Circus you will find that they have put down the several causes of infantile mortality, and the age of the child-mother appears almost at the bottom of the page. As the first causes they have put other things. The charts have been prepared by eminent medical men, and they have given the first places to improper feeding, malaria and other diseases, venereal infections, etc.

Q. Have they put these things in the order of importance ?

A. Yes ; important things they have put first, and the unimportant things they have given last.

Q. We have seen the reports of Health Officers of several cities. None of them is able to say what part a particular factor plays. Therefore it is impossible to draw any conclusion from any of these statistics unless they have been properly prepared.

A. I shall give you some more cases from the Baldevdas Hospital for Women. Out of a total of 3,181 cases of delivery, cases of delivery below 14 are 39, (including

premature labour cases) of which 38 were primipara and 1 multipara. There was no maternal mortality. The infantile mortality was 25.4 per cent. in these cases. If you exclude abortion, it is only 19.3 per cent.

Now coming to cases of delivery in the 15th year, i.e., cases of delivery between 14 and 15, the total number of delivery is 78 or 2.5 per cent. of the total cases. The number of children living is 62, and the infant mortality is 25.5 per cent. If abortion is excluded, it is 15 per cent. Between 15 and 16, total number of cases 128, i.e., 8.5 per cent. of the total number of cases; living children 99 infant mortality 24.2 per cent: excluding abortions, 17 per cent.

From these cases it would appear that if you take the number of labour cases below 16 or 15 or 14, or the total number of child-births if it is considered to be a sample of the cases outside the Hospital—the infant mortality is very little. Out of 3,181 cases 273 cases are below 16, or it is 12 per cent. If we take cases below the 15th year the infant mortality would be 14.5 per cent. These cannot count for the high infant mortality which is prevalent in the country. Supposing all the children were there, the mortality other than the 14.5 per cent. due to early maternity must be accounted for by girls higher than that age. That is why I say that the high infantile mortality is not due to early maternity. If Sir Harisingh Gour says it, we controvert it.

Q. We have not adopted the reasons given by Sir Harisingh Gour. If you controvert it, we will give your statement the same weight as his. Now we have found difficulties about hospital statistics. We are told that the primipara do not go in numbers to the Hospitals. That is why statistics on a larger scale is necessary. Girls at their first child births go to their mothers, and we cannot therefore say that the hospital statistics represent the same fraction of girls who really go away and do not have their first delivery in the hospitals. Really speaking statistics will have to be from all manner of people. For instance is there not a practice for girls to go to their mothers for the first confinement?

A. What we find is this. There is only one class of women who frequent the hospitals. Then there are those who meet with some difficulty and go to the hospitals. In normal cases therefore only very few people go to the hospitals. What we suspect is that the proportion of normal to abnormal cases is not the same outside hospitals as it is inside hospitals if we take the total number. The abnormal cases in the hospital would be higher than that outside.

Q. What class of people go to the hospitals?

A. Generally the poor and lower middle classes.

Q. Even from these statistics it is very difficult to draw conclusions in respect of the class of people who go there.

A. Therefore it is I say that it is difficult to say from these figures one thing or the other. If you have got any other statistics I would like to see them for I want to assure myself of the actual danger to the mother from early consummation and early maternity.

Q. One of the questions we have got to go through is whether a girl is safe for maternity.

A. But I do not see why you should have brought in early consummation.

Mr. Bhargava: How can you disprove that in 99 cases out of 100 cases early consummation does not take place?

A. I am still of this opinion that this early consummation is not responsible to the high infantile and maternal mortality. It is seen in India that it is not the cause. There are other causes which we suspect are more potent than this. This is my considered opinion.

Mrs. Nekru: Do you wish to make any distinction between marital and extra-marital offences as regards the age of consent?

A. I don't find that there is any necessity for it.

Q. Is it not a fact that the intelligent consent of the girl is wanted more for an extra-marital case and not so much for an intra-marital relation?

A. The only difference is that in one case there is social degradation and in the other case, there is no social degradation. That is the only difference.

Q. Is that not a sufficient cause to make a distinction of these two cases ?

A. No, because our girls do understand the importance of this act even when they are 13 years old.

Q. Do you think that a girl at 13 will be able to give an intelligent consent with a due realisation of consequences of her act ? Will you take it into consideration that in extra-marital relations the offence is committed by a stranger ?

A. We have thought over the whole problem. Apart from social degradation there is a moral degradation because if any one comes to know the act of such a girl, she is punished and she is liable to be removed from society. That is the only difference we have found out.

Q. Have you found girls below the age of 14 or 15 able to seduce men ?

A. Yes. I cannot say that boys only seduce the girls. It is *vice versa*.

Q. Will you tell me whether it is the man who is generally the aggressor.

A. The girl is the consenting party.

Q. But don't you see that the seducer himself induces the girl ?

A. There is inducement from both sides.

Q. Supposing there is a provision for a very slight punishment for boys upto a certain age say 16, 17 or 18 would you be in favour of raising the age of consent to 16 or 18 ?

A. Why should you punish the boys ? Do you punish the girls ?

Q. Don't you know that the society punished the girl much more than the boy if it can be proved that she is an aggressor ?

A. I don't agree with you.

Q. In your answer to Question No. 6 where we have asked you to give us instances of cases of co-habitation if any before 13 you have replied by saying that no facts are available. Just now you have given us a long list of girls. How is it that your two statements are inconsistent ?

A. I got these cases only much later. I don't know whether such cases occurred within the last one or two years. I only took notice of the cases occurring at the present time. So I take these cases as belonging to the present time and not to the past time.

Q. Do you still maintain this ?

A. I don't know any case before one year.

Q. You have said that garbhadan ceremony is usually performed. Is it a religious ceremony ?

A. At least you had better ask this question to pandits.

Q. Can you tell whether any rituals are performed at the garbhadan ceremony ?

A. Yes.

Q. In answer to Questions Nos. 3 and 4 you have said that sufficient facts are not known and therefore the answers will be according to the predilection of persons for or against the bill. But surely we wanted facts and figures and how can facts and figures lend themselves to predilection ?

A. How can we say that as a result of that this thing has happened or that thing has happened ?

Q. My question is whether crimes of seduction or rape occur frequently in your part of the country.

A. I don't know whether it is frequent or not frequent. The neighbours do not know the neighbours in the town of Calcutta. We have come here only to give the medical opinion on certain questions and we are not concerned with other questions like the above one and we really do not wish to enter into other peoples' provinces.

Mr. Bhargava : In your answer to Question No. 17 you say that it is the poor and ignorant classes in whom such offences are likely to take place and a fine which may reach upto Rs. 50 would be quite heavy for them. Is it really a fact that the consummation of marriage before 13 or 14 takes place only amongst the poor classes and all rich classes are exempt from it ?

A. Now-a-days the marriageable age amongst the rich class is raised. Amongst the Vaisyas no girl is married before 14.

Q. My question is this. Do you mean to say that consummation of marriage does not at all take place amongst the rich or middle class people before 13 or 14 and it only takes place amongst the poor class of people ?

A. All my answers and all the statistics which I suppose is for the Bengali community. I am not speaking about any other community say Marwari or Bhatia. Amongst the Bengali rich and middle class people the age of marriage has been raised now-a-days, and it is very rare amongst them that consummation takes place before 13 or 14.

Q. Do you deal with Namasudras ? In other words, are your answers also on behalf of the Namasudras ?

A. My answer is on behalf of ourselves ?

Q. Do you consider the case of Namasudras also ?

A. Yes. These are the cultivating class of people and generally amongst them the marriage is taking place earlier than the higher classes and therefore consummation also must take place before 13 or 14 and so I say that, it is a fact.

Oral Evidence of Dr. S. K. SEN GUPTA, Dr. B. N. GUPTA, Dr. A. K. SEN, Dr. M. N. BASU, Dr. J. C. CHATTERJEE and Pandit KALI-PADA KAVITIRTHA.

(Calcutta, 2nd January 1929.)

Chairman : From your statement do you not seem to make a difference between fitness for consummation and fitness for motherhood ?

Dr. A. K. Sen : I was thinking that each act of consummation does not lead to maternity.

Q. That everybody knows. But is there not a chance of maternity ?

A. Yes.

Dr. S. K. Sen Gupta : I have submitted a statement commenting on the figures given to us as being compiled by Dr. Adishesan, together with an analysis of cases collected by us with regard to several relevant points under enquiry.

Dr. B. N. Gupta : I am submitting a statement which will show mothers at various ages giving birth to children and the condition of the mothers and the children.

Q. Is there any conclusion that you wish to draw from these figures ?

Dr. B. N. Gupta : The conclusion that I draw from these figures is that the girls should be married at the time of puberty but not long after puberty.

Q. Do you mean to suggest that whatever be the age of the girl, she does not suffer provided consummation takes place after puberty ?

A. Yes ; If consummation takes place after puberty a girl does not suffer, but in cases where consummation has been delayed for 3 or 4 years, I have found that the girls have suffered. You will find from the figures I have given that the average age of puberty is 11.9 years and the average age at which confinement takes place is in some cases as much as 15.2 years.

Q. Can we not infer the age of consummation from the time at which confinement has taken place ?

A. No ; not in all cases ; of course, if the girl has confined at 12 or 13 we can infer that consummation should have taken place about 9 months before the confinement.

Q. Then what is the conclusion you wish to draw from these figures ?

A. That the health of the mothers and the children do not suffer if consummation takes place after puberty irrespective of the age. There may be other causes for their health being affected, and I have given them in a separate column under remarks. I might also mention in this connection that I have come across instances of late mothers after 1920 and 1921 though the number of such cases is very small. But the 5 or 6 cases which I have noticed, I have found that the result has not been good. There were two or three cases in which the mothers died after 2 or 3 issues and some contracted phthisis or some such disease and died.

Q. Do you draw any inference from that ?

A. I do not, because the cases are very few, but I simply point out the results I have noticed.

Dr. A. K. Sen : Can you give us any cases ?

A. I have submitted Analysis 5 from which it will be seen that it is not the first child-birth that brings about ill health or the death of the mother, but it is the frequency of the child-births.

Q. Do you suggest that early maternity is one of the causes of physical deterioration or not ?

A. No. I have given there the instance of a girl who had her first child-birth at the age of 15 and had 9 children 6 of whom are living. I have given two cases of mothers who died at child-birth, but I attribute it to frequency of child-births.

Dr. M. N. Basu : I have submitted a statement of 73 cases which shows the age of confinement of mothers from ages 11 to 20 ; and the conclusion that I wish to draw from these is that girls below 14 or 15 have no more risks and do not suffer any more than girls above that age.

Dr. Sen Gupta : I want to say a word or two about Mr. Adiseshan's statement. He has taken the 16th year as the standard, but it is not known whether it is the 16th year according to the English system ; and then the grouping is not uniform. Sometimes a higher and a lower age are combined. I have shown in my statement that if you group it as you like you can show that infant mortality is increasing.

Q. The grouping is always below 16 and over 16, because the results are drawn with regard to the fact that 16 is a safe age.

A. Again there are such columns as "mothers aged at confinement 14 and under." We do not know whether it is the English system that is meant here or it is the Bengali system. If it is the latter, my arguments would be stronger still.

Q. 14 and under means 14 complete and under.

A. But in the English system 14 years would mean 14 years 11 months and 29 days.

Q. The idea is that the more tender the girl the greater is the danger.

A. What does 15 mean ?

Q. 14 years 1 day to 14 years 365 days.

A. My case would then be stronger, because in my statements I have been very careful to take the very worst arguments against my contention.

I would like to point out in this connection that it is the average age of menstruation of girls, and not the age of consummation of girls, that should be taken into consideration in fixing the age of consent. Because what you are really trying to find out is what time should elapse after puberty. Some people say that the average age of puberty is 15 years and therefore the age of consent should be fixed at least one year after that, that is, at 16. Havelock Ellis says that in temperate climates the extreme limit is 15. We find that the average age of menstruation here in India is 13.

Q. How do you find the average age of puberty ?

A. Dr. Kedar Nath Das has given as 11 years and 10 months.

Q. But we find that there are several girls who attain puberty after 13. From the statistics we have been able to get we find that from 12 to 13 and 13 to 14 65 per cent. of the girls attain puberty. Therefore the age of puberty is not the only factor in determining the age of consent. You say that it can be fixed at a year or 6 months after the average age of puberty. But what the Legislature wants is that as many cases as possible should be covered, and you should take the largest number of cases.

A. The second point which I would wish to urge is that, if consummation is to be made punishable, and you suggest that maternity and not consummation is not dangerous by itself, then why not make maternity punishable instead of consummation ? We find that in about 2,000 cases where there has been consummation between 13 and 14 only 10 per cent. become pregnant. If so, why should you make all the 2,000 cases punishable ?

Q. You will admit that it is impossible to make maternity punishable. Therefore there are some people who say that the age of marriage can be fixed, and that the age of consent in marital cases may be on a par with the age of marriage fixed. They say this will effectually prevent consummation as well as maternity.

Mr. Chatterji : That is a good idea. But my point is that after the onset of puberty if there is consummation there may be no harm. After puberty there is an awakening of sexual appetite on the part of the girl, and there is also in her a feeling of reserve and shyness and she is afraid of going near males.

Dr. Sen Gupta : I do not agree that there can be a marriage law. Marriage is a social question and as such it should be dealt with by the society and Government should not interfere.

Mr. Bhargava : Is it a fact that the Medical Conference which sat here recently has suggested that 16 is the proper age for marriage ?

A. It is true that they recommended 16 for girls and 20 for boys as desirable, but we have got our own reasons for not saying anything for or against their decision.

Further Statement of Dr. S. K. SEN GUPTA and others of Calcutta.

1. The Chairman has asked us to supply him with our statistics and has also informed us that the work of the Committee is not confined to Sir H. S. Gour's Bill and that Sir H. S. Gour has given his suggestions and it is open to others to give their suggestions. We have been also asked to make our comments on the statistics supplied by Dr. Adishesan to the Committee.

2. Before proceeding to the statistics we would like to clear certain points which were raised on the last day.

3. If a married girl has cohabitation with her husband when she is not a consenting party under the influence of passion and when force has been used by the husband, some danger is likely to be met with. This does not depend on the particular age of the girl. Hysteria, frigidity and vaginismus may occur even if the female is an adult. "Even if she is ignorant, she may be permanently alienated and become chronically frigid, through the brutal inconsiderateness of her ignorant husband in carrying out what he conceives to be his marital duties. Sometimes, indeed, serious physical injury has been inflicted on the bride owing to ignorance of the husband."

(Havelock Ellis,—Studies in the Psychology of Sex, Vol. vi; ed. 1920, page 524.)

"Eulenburg finds (Sexuale Neuropathie, page 69) that vaginismus, a condition of spasmodic contraction of the vulva and exaggerated sensibility on the attempt to effect coitus, is due to forcible and unskilful attempt at the first coitus." (*Ibid*, page 525.)

4. Laceration of parts occurs in young girls or in adult women if the organ is large or if the husband acts with brutality, especially when he is drunk (*vide Ibid.*, 525).

5. "Nengebaner (Monantsschrift fier Geburtshilfe, 1889, Bk. ix, pp. 221 *et seq.*) has collected over one hundred and fifty cases of injury to women in coitus inflicted by penis. The causes were brutality, drunkenness of one or both parties, unusual position in coitus, disproportion of the organs, pathological conditions of the women's organs." *Ibid.*, page 525.

6. Whether the wife is a girl who has reached puberty, or is an adult woman, the husband should learn the Art of Love, and there is no harm if the girl wife after puberty be sexually excited by the application of the Art of Love before cohabitation, but harm may actually come to her if she be not so excited or is not under the influence of passion. All writers on erotics insist on this (*vide Ibid.*, whole of pages 525, 526, 527, and Vatsyayan, chapter on Kanya Brisambham). We have never seen or heard or read of a case where a girl after puberty was the worse for the practice on her of the Art of Love by her husband before cohabitation. On the other hand such satisfaction improves the health of the girl.

7. It has been said that our answer to questions 3 and 4 shows our bias. It would be interesting to learn what answers to these questions and on what data were given by other persons and their examinations thereon. The second part of the third question and also the fourth question are peculiar ones and our answer does not show any bias on our part, but it simply draws pointed attention of the Committee to the unfortunate nature of these questions.

8. We have been asked to criticise the memorandum of Dr. Adiseshan, but we would prefer to offer some preliminary comments, reserving a thorough examination of the same to the time when the final statistical analysis of the histories of these cases would be made available to us.

9. The memorandum does not definitely state whether these statistics include all the confinements registered in the four cities, Madras, Madura, Trichinopoly and Coimbatore, during the period October 1927 to September 1928. It seems from internal evidence that the memorandum does not include all the cases;—otherwise why should it take the help of average birth-rate (always an unsafe guide) to determine the population, instead of giving the actual census figures of the cities? If it does not include all the cases, at least all the Indian cases, then the inevitable conclusion is that the report is based on a selection of cases. Moreover we have no means of judging whether these are a fair sample of the cases occurring in the four cities; neither do we know whether hospital statistics are included. If they are included, a separate table of their analysis should have been given. The cases are admittedly not a fair sample of the province or even in the districts mentioned and we have no means of judging whether they are a fair sample of the cities either.

10. The next remark which we wish to make is that these statistics do not make any effort to distinguish the effects of the youth or age of the mother from the effects of other factors such as poverty, ignorance and non-observance of the laws of hygiene, of malaria and of venereal infections.

11. The third remark which we wish to make is that no attempt has been made to show the effect of consummation at the 14th year and therefore child-birth at the 15th year. The figures of confinements at 15th year are the most important for the purpose of the present investigation; unfortunately the figures for the 15th year have not been separately shown but they have been grouped with cases of confinements of girls below 14 years. Neither do the tables show the figures of each age separately; ages have been grouped together in different ways in different tables (*vide statements Nos. I, II, V and VI*).

12. Hence it is not possible to compare the results of confinements at different ages. These are the general remarks which we have felt necessary to make in order to evaluate the importance of the figures which have been so laboriously collected and tabled. We have taken that the ages are given in the English method.

13. Assuming for arguments' sake that these figures represent a true and correct state of affairs in the Province of Madras or at least in the cities mentioned, a little attention will show that the conclusions sought to be drawn from these are not justified. Let us for instance take the figures of maternal mortality in first confinements. It is stated in statements Nos. III and V that 38 confinements took place in girls of 14 years and under and that 2 deaths occurred in them. We take it that "14 years and under" means "under 15 years." From this an attempt has been made to infer that maternal deaths in such cases are over 52 per thousand of confinements. *No statistician will draw such an inference from so few cases of confinements below 15 years. In the Baldeodas Maternity Hospital, out of a total 143 primiparae below 15 years there has been only 1 maternal death from Eclampsia.* The cases in maternity hospitals generally show a larger proportion of difficult and abnormal labour cases than is to be found in the country outside. Even here we find only one death in 143 first confinements (i.e., 7.00 per thousand) below 15 years. Curiously enough there has been no death in 66 cases of first confinements below 14 years. *Shall we be justified to draw an inference from the above that there is no maternal mortality in confinements below 14 years and that mortality at the 15th year confinement is 1 in 77 or 12.9 per 1,000?* It may be contended that proper care in hospital has averted many deaths which would otherwise have occurred and if these girls had not come to hospital, the mortality would have been higher. This supports our contention that proper prenatal, natal, and post-natal care is an important factor. If in Dr. Adiseshan's table, the confinements in the 15th year and confinements under 14 years were separately shown we would have been in a better position to deal with the question. Suppose for a moment that the two deaths had occurred in confinements below 14 years and none occurred in the 15th year. If that were the case, shall we be justified to say that there is no maternal mortality in the 15th year? Or suppose that the two deaths occurred in the 15th year and none occurred in confinements below 14 years; shall we be justified to say that there is no maternal mortality in confinement under 14 years? We have dealt with these confinements a little in detail to show—

- (1) That our complaints as regards grouping of ages in the table of Dr. Adiseshan is not a formal one.
- (2) That percentages drawn from a small number of cases in a particular group cannot be a true and reliable guide to the actual state of affairs.

14. Let us compare statements Nos. III and V. In them all ages of 14 years and under, that is to say all ages under 15, have been grouped together. But all ages under 16 have been grouped together in statement VI. They are to be seen in the first row of each of these tables. Although the ages of 15 and 16 have been separately shown in statement III, they have been lumped together in statement V which gives the maternal mortality in first confinements. Statement IV shows that the number of first confinements was 1,440 and the number of maternal deaths 46, whereas statement V shows them to be 1,350 and deaths 42 only. The discrepancy can be explained in one way only; there must have been 90 first confinements with 4 deaths in girls of 25 years and above. Then the maternal death rate per thousand confinements in these girls would be 44.4 per thousand; and if we lump together all ages from 20 upwards, we find that the maternal death rate per thousand confinements would be 30.1. Then statement V would show practically the same maternal mortality in all the groups except the first. We have already dealt with the first group of mothers. So from 15 years upwards the maternal mortality is practically the same, i.e., it is between 30 to 32 per thousand. That shows if we are justified to lump ages at our will, that influence of age on maternal mortality of mothers of 15 years and above is negligible. Our great grievance has been that the most important age for our purpose "15th year" has not been separately shown in statements III, V and VI. Neither have the 16th, 17th or the 18th year been shown separately for the purpose of comparison with the 15th year. These ages could have been very easily shown separately and no extra labour or trouble would have been involved. Moreover, we do not understand the reason for not recording 90 cases with 4 deaths in statement V, although such recording would

have given a maternal death rate of 30.1 per thousand in primiparae or 20 years and above. The total of statement III is 6,882, whereas the total of statement IV is 6,877. The deaths in statement III are 122, whereas the deaths in statement IV are 115 : so that there is a decrease of 5 confinements and a decrease of 7 deaths in statement IV. These totals should have tallied in the two statements and no explanation has been given to explain the discrepancy.

15. Now let us consider Dr. Adiseshan's statement No. VI. He shows the neo-infantile mortality of mothers below 16 years in the first row. 37 deaths of infants in 176 births have been recorded there. Compare it with the infantile mortality of Baldeo Das Maternity Home. If we exclude the abortions and moles but include the premature, macerated and stillbirths, then the mortality will be 44 infantile deaths in 252 cases, i.e., 175 deaths per thousand as against Dr. Adiseshan's figure of 210. It is usual for hospital statistics to show a higher proportion of difficult and abnormal cases ; and mortality of infants in abnormal cases is generally high. In spite of it there are 175 deaths per 1,000 to Dr. Adiseshan's 210. If it be contended that proper care of mothers and infants in hospital is the cause of this lower figure, then our contention as to pre-natal, natal and post-natal care of mother and child will be supported. We have taken that the figures in statement VI of Dr. Adiseshan do not include the abortions and moles, because the total 6,743 of this statement does not tally with the total of 6,877 in statement IV and the total 6,882 in statement III. But if we separate the different ages of the Baldeo Das Maternity Home cases, we find a curious phenomenon (*vide* analysis No. I).

Age of mothers.	Neo-infantile death rate per thousand births.
(a) below 14 years	209
(b) 15th year	150
(c) 16th year	170

The 15th year mothers show the lowest mortality of infants. Unfortunately Dr. Y. Sen, M.B., the Lady Superintendent of the Baldeo Das Maternity Home, could not give us the figures of ages above 16 years, as their preparation would have involved a great deal of labour. We shall be highly thankful if the committee can persuade her to supply these. Again take the Vedic Brahman family cases. (*Vide* analysis No. II.)

16. This shows a low mortality of infants during first year of life in 15th year mothers. We should, therefore, like a compilation of more statistics. *But may we here ask whether if in Dr. Adiseshan's statistics the figures for 15th year mothers were separately shown, a similar phenomenon would have been observed both as regards maternal and infantile mortality?* Even if such was the case, no person having some scientific training would have been misled into thinking that these statistics prove that 15th year mothers are the best. We do not claim that such is the case from our figures. What we claim is, that there is no evidence to show that 15th year mothers are worse than 16th year, 17th year or 18th year mothers and we can justly say that consummation in the 14th year (allowed by the present law) and maternity at the 15th year is not fraught with such dangers as is usually apprehended by Western and Westernised people.

17. Assuming that Dr. Adiseshan's figures can be relied upon, we can, once for all, lay to rest the contention of those who hold that early maternity is responsible for high maternal and infantile mortality in this country (*vide* Question 12 in the question naire of the Committee and Sir H. S. Gour's contention in Objects and Reasons attached to this Bill).

18. Maternal mortality in all confinements is 17.73 per thousand of births (*vide* statement III). If we leave all the mothers below 15 years the maternal mortality works out at 17.53 per thousand of births. If there were no mothers below 15 years, the rate would have been 17.53 and including them, the rate is 17.73. This is the influence that the presence of these girl mothers has on the general maternal mortality. It may be said that this 17.53 is mostly due to subsequent pregnancy

of these girl mothers. But we can very easily show this contention to be wrong. The mortality of all first confinement cases is 31.94 per thousand births (*vide* statement V). If we exclude the mothers below 15 years the mortality will work out at 31.38, that is to say the mortality will be lowered from 31.94 to 31.38 per thousand of births if we prevent the motherhood of girls below 15 years. We should think that this mortality of 31.38 is a matter of great urgency rather than a mortality of .56 per thousand which is contribution of girl mothers to the total maternal mortality.

19. Again in case of neo-infantile mortality if we exclude mothers below 16 years, the mortality is 100.65 (*vide* statement VI) and if we include them the mortality is 103.51 per thousand of births. Is not the elimination of the mortality of 100.65 more urgent than the elimination of the mortality of 2.86 due to the presence of girl mothers?

20. It will thus be seen that the presence of these girl mothers is not the cause of the high maternal and infantile mortality in the country—the cause of which has to be sought for elsewhere. But we are told that the exclusion of these girls from motherhood is the most urgently needed reform for the improvement of our race and the urgency is so acute that the criminal law has to be invoked to prevent not only such motherhood but even the consummation of marriage of such girls. Can anything be more absurd?

21. Now let us consider the question of puberty. Dr. Kedarnath Das, M.D., the eminent obstetrician and gynaecologist, gives 11 years 10 months as the average age of puberty of girls. Dr. Adiseshan gives 12.5 years as the average age of puberty. Our figures (*vide* analysis No. III) give it as 11.94, so that 12 years may be taken as the average age of puberty. It may happen that the average age of puberty may either be higher or lower in some province or other. The question of this average age is most important. The following quotation from Havelock Ellis's *Psychology of Sex*, Vol. VI, pages 528, 529 and 530, would show that not only in intra but also in extra-marital intercourse, the age of consent should be linked with the average age of puberty. We would ask everybody to kindly read these pages patiently as we believe that in them Havelock Ellis deals with the crux of the whole case of age of consent and we are quoting those pages fully to give them this facility.

22. Havelock Ellis says that 16 years is the extreme high limit in temperate climate (*vide* quotation from Havelock Ellis, para.). He considers that raising the age of consent to 18 or to a higher age is arbitrary, artificial and unnatural and does not rest on sound biological basis (*vide* quotation from Havelock Ellis, para. 25 and para. 29). He suggests that if one year be added to the average age of the appearance of menstruation, we get the age of consent (*Ibid*, para. 26). Therefore it is apparent that the age of consent in India should be 13 years—the average age of menstruation being 12 years as shown previously. If, on other grounds, we raise it to a higher age than 13, intercourse with a girl between 13 and that higher age should not be considered to be rape and shall not be made punishable by anything more than a fine. When intercourse takes place between a girl and a boy of nearly the same age, or of slightly higher age, it is nothing but criminal to punish the boy, as the girl is likely to be the more mature, the more self-possessed, and the more responsible of the two and often the one who has taken the more active part in initiating the act (*vide Ibid*, para. 28). Dr. Norman Haire, Ch.M., M.B., in his book *Hymen*, at page 51, says that in temperate climates sexual maturity is complete, physically, at about 16 years of age. He continues: "At this age normal youths and maidens are ripe for mating. Puberty has issued as a direct result of the increased activity of the gonads—the boy or girl is now an adult. Mating should occur without delay. Long postponement of normal sexual activity may lead to physical and mental ill-health, to a continuance of auto-erotic activity (which in the adult is unsatisfactory substitute for normal sexual intercourse and which, if persisted in too long, may even lessen the person's fitness for normal mating), or to various forms of sexual aberration." The importance given to puberty in this passage should be noted. It is puberty which is the determining factor—modern trend of opinion is towards this point of view. Mrs. Bertrand Russell in *Hypatia*, an answer to *Lysistrata*, did not controvert

this point. Judge Lindsey in his *Revolt of Modern Youth*, Ed. 1928, at page 81, says: "That girls who mature early while they are still very young chronologically and intellectually are the most likely to get into trouble with boys." We find that the girls mature at the average age of twelve years in this country. Is it right that marriage and cohabitation are to be prohibited to such girls with consequent danger of grave risks which is now confronting America?

23. There is another point which we would like to mention here. In England child-birth has become abnormal, so much so that chloroform and forceps have to be invoked to the aid of the parturient women and a tide has set in against motherhood, owing to the pain and difficulty of child-birth. It is the universal experience of obstetricians here that child-birth in girls of 13, 14, or 15 is easy. If maternity is deferred, then difficulty in delivery arises; and a case of forceps in a village is a great danger to the mother or the child, however simple it may be in the cities or in the hospitals. Therefore the easiness is not a matter to be lightly passed over as some people do. (*Vide* A. M. Ludovici in *Lysistrata*, page 54.)

24. Last of all, we must strongly deprecate the attitude of those who attempt to slight the evidence of easy and safe delivery, healthiness of mother and offspring as exceptional, but who become angry if their evidence as to the dangers of maternity be characterised in the same way. They forget that proper statistics are required to settle the question one way or the other. We have given some instances of young mothers and their children both doing well. It will be seen while generally the young mothers' record is good, one or two bad mothers vitiate the whole result. The important question is what happens in an ordinary healthy girl. If consummation by itself be not dangerous to the girl, and if only a small percentage of such girls become pregnant, then equity demands that consummation should not be made punishable; assuming that maternity in such girls is dangerous, then maternity should be made punishable but here we meet with many difficulties. Two ways are open to us either to make consummation, the cause of the cause, punishable and let equity and justice go to the dogs, or stay our hands and cease from legislating on this question. We have not been able to fix the percentage of girls becoming pregnant in the 14th year, either from Dr. Adiseshan's figures or from any other figures; many fallacies stare at our face; neither are the dangers of maternity at the 15th year in an ordinary healthy girl so likely or inevitable that we can safely pronounce such maternity criminally punishable. We shall leave alone the *a priori* arguments such as:—

- (i) The Tooth Argument.
- (ii) The Breeder's Covering Argument.
- (iii) The "Puspita" Argument.
- (iv) The Breeder's Covering Argument as being scientifically childish.

25. "In recent years there has been a tendency to run to the opposite and equally unfortunate extreme of raising it to a very late age. In England by Criminal Law Amendment Act of 1885, the age of consent was raised to 16 (this clause of the Bill being carried in the House of Commons by a majority of 108). This seems to be the reasonable age at which the limit should be set and its extreme high limit in temperate climates. It is the age recognized by the Italian Criminal Code, and in many other parts of the civilized world. Gladstone, however, was in favour of raising it to eighteen, and Howard, in discussing this question as regards the United States (*Matrimonial Institutions*, Vol. iii, pp. 195-203), thinks it ought everywhere to be raised to twenty-one, so coinciding with the age of legal majority at which a woman can enter into business or political relations. There has been, during recent years, a wide limit of variation in the legislation of the different American States on this point, the differences of the two limits being as much as eight years, and in some important States the act of intercourse with a girl under eighteen is declared to be "rape," and punishable with imprisonment for life.

26. Such enactments as these, however, it must be recognized, are arbitrary, artificial, and unnatural. They do not rest on a sound biological basis, and cannot be enforced by the common sense of the community. There is no proper analogy

between the age of legal majority which is fixed, approximately, with reference to the ability to comprehend abstract matters of intelligence, and the age of sexual maturity which occurs much earlier, both physically and psychically, and is determined in women by a very precise biological event: the completion of puberty at the onset of menstruation. Among peoples living under natural conditions in all parts of the world it is recognized that a girl becomes sexually a woman at puberty; at that epoch she receives her initiation into adult life and becomes a wife and a mother. To declare that the act of intercourse with a woman who, by the natural instinct of mankind generally, is regarded as old enough for all the duties of womanhood, is a criminal act of rape, punishable by imprisonment for life, can only be considered an abuse of language, and, what is worse, an abuse of law, even if we leave all psychological and moral considerations out of the question, for it deprives the conception of rape of all that renders it naturally and properly revolting.

27. "The sound view in this question is clearly the view that it is the girl's puberty which constitutes the criterion of the man's criminality in sexually approaching her. In the temperate regions of Europe and North America the average age of the appearance of menstruation, the critical moment in the establishment of complete puberty, is fifteen (see, e.g., Havelock Ellis, *Man and Woman*, Ch. XI; the facts are set forth at length in Kishel's *Sexual Life of Woman*, 1909). Therefore it is reasonable that the act of an adult man in having sexual connection with a girl under sixteen, with or without her consent, should properly be a criminal act, severely punishable. In those lands where the average age of puberty is higher or lower, the age of consent should be raised or lowered accordingly. (Bruno Meyer, arguing against any attempt to raise the age of consent above sixteen, considers that the proper age of consent is generally fourteen, for, as he rightly insists, the line of division is between the ripe and the unripe personality, and while the latter should be strictly preserved from the sphere of sexuality, only voluntary, not compulsory, influence should be brought to bear on the former. *Sexual Problems*, Ap., 1909.)

28. "If we take into our view the wider considerations of psychology, morality and law, we shall find ample justification for this point of view. We have to remember that a girl, during all the years of ordinary school life, is always more advanced both physically and psychically than a boy of the same age, and we have to recognize that this precocity covers her sexual development; for even though it is true, on the average, that active sexual desire is not usually aroused in women until a somewhat later age, there is also truth in the observation of Mr. Thomas Hardy (*New Review*, June, 1894): 'It has never struck me that the spider is invariably male and the fly invariably female.' Even, therefore, when sexual intercourse takes place between a girl and a youth somewhat older than herself, she is likely to be the more mature, the more self-possessed, and the more responsible of the two, and often the one who has taken the more active part in initiating the act.' (This point has been discussed in "The Sexual Impulse in Women" in Vol. iii of these studies.) It must also be remembered that when a girl has once reached the age of puberty, and put on all the manner and habits as well as the physical development of a woman, it is no longer possible for a man always to estimate her age. It is easy to see that a girl has not yet reached the age of puberty; it is impossible to tell whether a mature woman is under or over eighteen; it is therefore, to say the least, unjust to make her male partner's fate for life depend on the recognition of a distinction which has no basis in nature. Such considerations are, indeed, so obvious that there is no chance of carrying out thoroughly in practice the doctrine that a man should be imprisoned for life for having intercourse with a girl who is over the age of sixteen. It is better, from the legal point of view, to cast the net less widely and to be quite sure that it is adapted to catch the real and conscious offender, who may be punished without offending the common sense of the community. (Cf. Bloch, *The Sexual Life of Our Time*, Ch. XXIV; he considers that the "age of consent" should begin with the completion of the sixteenth year.)

29. "It may be necessary to add that the establishment of the "age of consent" on this basis by no means implies that intercourse with girls but little over sixteen should be encouraged, or even socially and morally tolerated. Here, however, we are not in the

sphere of law. It is the natural tendency of the well-born and well-nurtured girl under civilized conditions to hold herself in reserve, and the pressure whereby that tendency is maintained and furthered must be supplied by the whole of her environment, primarily by the intelligent reflection of the girl herself when she has reached the age of adolescence. *To foster in a young woman who has long passed the epoch of puberty the notion that she has no responsibility in the guardianship of her own body and soul is out of harmony with modern feeling,* as well as unfavourable to the training of women for the world. The states which have been induced to adopt the high limit of the age of consent have, indeed, thereby made an abject confession of their inability to maintain a decent moral level by more legitimate means ; *they may profitably serve as a warning rather than as an example."*

ANALYSIS No. I

Baldeo Das Maternity Home (Figures from March 1921 to 8th December, 1928).

Total Cases :—3,181.

Total Number of abnormal Labour Cases (including premature and still-births, moles and abortions) :—1,062.

N.B.—Premature births involving no other difficulty have been included in Normal Labour.

Age of Mothers.	Total No. of Mothers.	PRINCIPARA.		MULTIPARA.		Maternal mortality. (in Hospital).	Abortions and Moles.	Infants alive at the time of leaving Hospital.	AVERAGE WEIGHT.		Neo-Infantile mortality per thousand births.
		Normal Labour.	Difficult Labour.	Normal Labour.	Difficult Labour.				All.	Excluding premature births.	
Under 14 years	67	38	29	1	Nil	Nil	5	50	4 $\frac{1}{2}$ lb.	5 $\frac{5}{16}$ lb.	209.67. ($\frac{3}{4}$)
15th year	78	51	28	Nil	1	1	5	62	5 $\frac{1}{2}$ lb.	5 $\frac{2}{16}$ lb.	150.68. ($\frac{1}{4}$)
16th year	128	82	45	1	Nil	1	11	97	4 $\frac{1}{2}$ lb.	5 $\frac{2}{16}$ lb.	176.93. ($\frac{7}{16}$)
TOTAL	273	161	99	2	1	2	21	209	4 $\frac{1}{2}$ lb.	5 $\frac{5}{16}$ lb.	174.60. ($\frac{1}{16}$)
16 years and above											

Figures not supplied by Mrs. J. Sen, M.B.

Calculations of these mortality rates are not justified statistically. We give them for what they are worth.

ANALYSIS No. II.

Vaidic Brahmin family Cases.

All girls were married before puberty.

Whenever the ages were given by the Collectors in the Bengalee system, they have been converted into the English system in this Table.

There have been no maternal deaths either at first or subsequent confinements.

Age of Mother at first confinement.	Total No. of Mothers.	Total No. of Infants at first confinement.	Mortality of Infants at first confinement in the 1st year of life.	Total confinements.	Infantile mortality in all confinements in the 1st year.	ABORTIONS		Mortality of Infant in 1st year of life in all pregnancies per 1000 births.
						In first Pregnancy.	In subsequent pregnancies.	
12	3	3	1	29	11	Nil	Nil	..
13	10	11	5	60	25	Nil	Nil	..
14	21	21	2	117	5	Nil	Nil	42.73
15	25	25	2	141	21	Nil	3 (in the same girl)	170.21
16	14	14	2	66	8	Nil	Nil	121.21
17	24	24	7	181	29	Nil	1	143.64
18	6	6	Nil	23	3	Nil	Nil	232.05
19	5	5	3	32	9	Nil	Nil	
20	2	2	Nil	3	Nil	Nil	Nil	
21	3	3	Nil	20	10	Nil	Nil	
TOTAL	113	114	22	669	121	Nil	4	180.86

Calculation of the mortality rates is not justified statistically. We give them for what they are worth.

N.B.—All these cases were delivered at home without medical aid.

ANALYSIS No. III.

Ages of first menstruation and first confinement.

All the girls were married before Puberty.

(All ages are given in English system.)

Mother's age at first confinement.	Vaidic Brahmin Families.	Dr. M. N. Bose's cases.	Dr. B. N. Gupta's cases.	Dr. A. N. Sen's cases.	Total (first confinements).	Number of cases of first menstruation at different ages.
10 years . . .	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	11
11 " . . .	<i>Nil</i>	5	5	<i>Nil</i>	10	20
12 " . . .	3	3	6	<i>Nil</i>	12	52
13 " . . .	10	14	11	2	37	29
14 " . . .	21	13	3	3	40	2
15 " . . .	25	13	1	6	45	<i>Nil</i>
16 " . . .	14	8	2	1	25	<i>Nil</i>
17 " . . .	24	8	2	1	35	<i>Nil</i>
18 " . . .	6	5	1	<i>Nil</i>	12	<i>Nil</i>
19 " . . .	5	2	<i>Nil</i>	<i>Nil</i>	7	<i>Nil</i>
20 " . . .	2	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	4	<i>Nil</i>
21 " . . .	3	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	3	<i>Nil</i>
Above 21 years (38 years).	<i>Nil</i>	<i>Nil</i>	1	<i>Nil</i>	1	<i>Nil</i>
TOTAL . . .	113	73	32	13	231	127
Average age . . .	..	..	..	..	15.15	11.94

REMARK.—Although this table refers to the ages of menstruations of the same girls whose ages of first confinement are recorded herein, the discrepancy in the total number in columns 6 and 7 is explained by the fact that the collectors could not always get the age of menstruation. In fact, column 7 refers to 22 cases of Dr. M. N. Bose, 17 cases of Dr. A. N. Sen, and 88 cases of Vaidic Brahmin family.

ANALYSIS No. IV.

Veneral Infections in boys and girls, evidently contracted from older persons of the opposite sex.

Name.	Sex.	Age.	Infection.
A. D.	Female . . .	7	Gonorrhoea.
P.	Male . . .	14	Gonorrhoea.
R. S.	Male . . .	14	Cancere (Syph.).
S. P.	Female . . .	7	Syphills.
S.	Female . . .	11	Gonorrhoea.
A. N. D.	Male . . .	12	Syphills.
K.	Female . . .	12	Syphills.
K.	Male . . .	15	Syphills.
S.	Male . . .	14	Syphills.
M.	Male . . .	12	Gonorrhoea.
N.	Female . . .	8	Syphills.
N.	Female . . .	14	Syphills.
B. B.	Male . . .	14	Gonorrhoea.
L.	Female . . .	11	Syphills.
S.	Male . . .	9	Syphills.
K.	Female . . .	11	Gonorrhoea.

N.B.—The ages recorded here are as given by the patients or their relatives.

ANALYSIS No. V.
Dr. A. K. Sen's cases.
One family.
English age.

	Age of marriage <i>Female.</i>	Age of marriage <i>Male.</i>	1st mens- truation age.	1st issue age.	Total No. of children.	No. of issues dead.	No. of children living.
1	9	17	11	15	9	3	6
2	(a) 11	14	11	13	11	8	3
	(b) 11	33	11	14	8	3	5
3	11	16	13	15	8	1	7
4	11	16	13	15	2	..	2
5	10	18	11	18	7	5	2
	19	36	13	20	1st pregn- ancy.	Pregnant.	..
6	8	19	10	15	1	..	1
7	11	20	10	13	1	1	..
8	14	21	12	19	2	1	1
9	10	20	13	15	3	1	2
10	11	20	11	15	6	..	7
11	12	22	12	16	3	..	3
12	13	20	12	..	..	..	..
13	14	19	12	15	3	..	3
14	11	23	11	14	Pregnancy	..	..
15	16	23	12	19	2	..	2

Age of confinement.	Number of cases.	First children.	Neo-natal death or abortions.	Alive at present and present ages.	Subsequent death.	Unknown at the present time.	REMARKS.
(Married before puberty.)							
11	5	5	1	2 (3, 4, 7)	Nil	2	
12	3	3	Nil	1 (20)	Nil	2	
13	14	14	1 Decapita- tion.	7 (11, 2, 18, 7, 30, 35, 26).	1 at 2 years	3	
14	13	13	1 death just after delivery, 1 Eclampsia,	4 (24, 21, 61, 40).	Not known	7	
15	13	13	1 Abortion, 1 died 13 days after birth.	6 (23, 10, 3, 39, 15, 8).	Not known	5	
16	8	8	Nil	1 (25)	Not known	7	
17	8	8	Nil	2 (15, 14)	Not known	6	
18	5	5	Nil	5 (21, 14, 27, 39, 40).	Not known	..	
19	2	2	Nil	Not known	Not known	2	
20	2	2	Nil	Not known	1 dead now	1	
TOTAL	73 cases						

Dr. B. N. GUPTA'S CASES.

Serial No.	Name.	1	2	3	4	No. of children.	No. of infant deaths (within 5 years of age).	General health of children.	General health of Mother.	REMARKS.
1	U. N. Gupta's mother	.	9	After marriage.	13	13	NH	Good except 2 or 3.	8	9 Died at the age of 80.
2	Her 1st daughter	.	11	Do.	14	4	NH	Good	Do.	Till an attack of Kalaraz of which she died at the age of 23.
3	" 2nd "	.	11	Do.	14	14	..	Good except 4 or 5.	Do.	Present age 65.
4	" 3rd "	.	11	Do.	15	6	3	Fair	Do.	Till an attack of puerperal fever of which she died at the age of 23.
5	" 4th "	.	11	Do.	14	10	3	Fair except 3.	Do.	Present age 60.
6	" 5th "	.	No issue.	Do.	18	6	3	Delivery	Do.	Died of influenza at the age of 42 (Malarious district).
7	" 6th "	.	11	Do.	14	11	4	Good except 4.	Do.	Till an attack of pleurisy died at the age of 34.
8	" 7th "	.	12	Do.	18	12	8	Bad except 4.	Bad	Died at the age of 34 (Malarious district).
9	" 8th "	.	13	Do.	16	11	2	Delicate	Good.	Present age 49.
10	" 1st daughter-in-law	.	13	Do.	15	10	1	Fair except 1.	Do.	Present age 45.
11	" 2nd "	.	12	Do.	13	11	2	Fair except 3 or 4.	Fair	Present age 41.
12	" 3rd "	.	11	Do.	13	11	2	Fair except 3 or 4.	Fair	Present age 41.
13	" 4th "	.	No issue.	Do.	13	11	2	Fair except 3 or 4.	Fair	Present age 41.

Dr. B. N. GUPTA'S CASES—contd.

Serial No.	Name.	Marriage at the age of	Puberty at the age of	First child at the age of	No. of children.	No. of infant deaths (within 5 years of age).	General health of children.	General health of Mother.	REMARKS.
	1	2	3	4	5	6	7	8	9
12	Her 5th daughter-in-law .	12	No issue	14	7	Nil	Fair except 2 or 3.	Good	Present age 34.
13	A. C. Gupta's mother .	9	Do.	14	9	1	Fair except 2 or 3.	Do.	Died at the age of 71.
14	Her daughter .	12	Do.	15	4	Nil	Fair	Do.	Died at the age of 75.
15	" 1st daughter-in-law .	12	Do.	14	12	4	Fair except 5 or 6.	Do.	Present age 62.
16	" 2nd "	12	Do.	19	9	3	..	Do.	Present age 55.
17	" 3rd "	15	Before marriage.	18	5	Nil	Good except 1.	Do.	Died at the age of 44.
18	M. Gupta's daughter .	15	Do.	16	5	Nil	Bad	Bad	Present age 27.
19	Ditto .	15	Do.	18	4	..	Bad except one.	..	Present age 25.
20	B. Gupta's 1st daughter .	14	Do.	16	5	1*	Bad	Bad	Present age 26 (Malarious district). *Difficult labour. 1st child delivered dead. Present age 24.
21	" 2nd "	16	Do.	21	2	1	Delicate	Delicate	Present age 19.
22	" 3rd "	14	Do.	16	1	Nil	Good	Good	Present age 22 (Malarious district).
23	H. Gupta's daughter .	14	Do.	15	4	Nil	Bad	Bad	Present age 20 (Malarious district).
24	Ditto .	16	Do.	17	2	Nil	Bad	Bad	Present age 20 (Malarious district).
25	B. Gupta's daughter .	14	Do.	15	3	Nil	Delicate except 1.	Fair	Ditto.

26	B. C. Gupta's wife	.	.	.	10	After marriage.	13	8	2	Good	Good	Present age 35.
27	P. Gupta's wife	.	.	.	16	Before marriage.	18	6†	3	Fair	Fair	Present age 34. †1 twin.
28	K. Gupta's wife	.	.	.	14	Do.	17	3*	Nil	Delicate	Delicate	Present age 24.
29	M. Gupta's wife	.	.	.	18	Do.	20	1	Nil	Do.	Do.	Present age 25.
30	S. Mullick	.	.	.	21	Do.	22	4	2	Fair	Bad	Died of Puerperal Anemia at the age of 26.
31	T. Gupta's wife	.	.	.	18	Before marriage.	19	4	Nil	Good	Good	Present age 23.
32	A. Mazumdar's wife	.	.	.	14	Do.	25	3	Nil	Good	Good	Present age 42.
33	S. Sen's wife	.	.	.	8	After marriage.	12	15	3‡	Good	Good	Present age 59. ‡ One immediately after birth, one of small-pox and another of accident.
34	B. Sen's wife	.	.	.	7	Do.	13	18	Nil	Good	Good	Died at the age of 70.
35	M. K. Gupta's wife	.	.	.	9	Do.	13	12	2	Good	Good	Present age 53.
36	B. Sen's wife	.	.	.	10	Do.	17	4	Nil	Good except 1.	Good	Present age 50.
37	A. Gupta's wife	.	.	.	9	Do.	14	9	1	Good except last.	Good	Till death at the time of last labour at the age of 35.
38	D. Gupta's wife	.	.	.	10	Do.	12	6	Nil	Good	Delicate	Present age 48.
39	K. Gupta's wife	.	.	.	10	Do.	12	4	2	Good except 3.	Good	Present age 42. Daughter of (33).
40	K. Gupta's daughter	.	.	.	10	Do.	12	6	Nil	Good	Good	Present age 30. Daughter of (39).
41	S. Banerjee's wife	.	.	.	12	Before marriage.	14	10	2	Good except 2.	Good	Present age 32.
42	L. Sen's daughter	.	.	.	19	Do.	21	1	Nil	Delicate	Bad	Died of Pthiasis at the age of 23.
43	B. Gupta's wife	.	.	.	19	Do.	20	2	Nil	Fair	Bad	Died of Pthiasis at the age of 27.

Dr. B. N. GUPTA'S CASES—*concd.*

Serial No.	Name.	1	2	Marriage at the age of	Puberty at the age of	First child at the age of	No. of children.	No. of infant deaths (within 5 years of age).	General health of children.	General health of Mother.	REMARKS.
44	B. Mitter's mother	.	.	.	.	38	2	Nil	Good	Good	Present age 86.
45	B. Mitter's aunt	.	.	.	.	14	6	Nil	Good	Good	Died at the age of 72.
46	Ditto	.	.	.	.	17	1	Nil	Good	Good	Present age 60.
47	B. Mitter's sister-in-law	.	.	.	.	17	2	Nil	Delicate	Bad	Died of Pthias at the age of 25.
48	B. Mitter's wife	.	.	.	.	17	2	Nil	Good	Bad	Died of Pthias at the age of 23.
49	A. N. Roy's mother	.	.	.	.	14	14	3	Good	Good	Present age 87.
50	D. Sen's wife	.	.	.	.	13	21	..	Good	Good	Present age 65.
51	R. Sen's wife	.	.	.	.	12	22	2	Good	Good	Died at the age of 88.
52	A. Sen's wife	.	.	.	.	20	1	Nil	Good	Good Delicate	Present age 22.
53	D. Mukherjee's wife	.	.	.	.	13	9	Nil	Good	Good	Died at the age of 68.
54	Her 1st daughter	.	.	.	.	14	7	Do.	Good	Good	Died at the age 65.
55	" 2nd "	.	.	.	.	13	2	Do.	Do.	Do.	Present age 69.
56	" 3rd "	.	.	.	.	13	2	Do.	Do. (asthmatic.)	Later issue (asthmatic.)	Died of Asthma at the age of 48.
57	" 4th "	.	.	.	.	15	5	(Still-born)	Good	Good	Died of chronic indocyanidosis at the age of 32.

**Written Statement, dated the 17th November 1928, of Mr. M. K. BOSE,
Editor, A. B. Patrika, Calcutta.**

1. Yes, there is dissatisfaction among the educated people.
2. The circumstances which in my opinion justify an advance on the present law are :—
 - (a) Public opinion is now sufficiently educated to accept a change in the law.
 - (b) So far as marriage intercourse between husband and wife is concerned among the educated people at least the age of marriage has considerably gone up. The raising of the age of consent therefore so far as the wife is concerned as proposed will fit in with the existing practice. As to the backward classes early marriage among them is still the rule but their ideas have been influenced by the example of the educated classes. I think therefore that even in their case the raising of the age of consent for the wife as proposed will not have the effect of hurting their prejudices to any great extent.
 - (c) In regard to the change proposed in section 375, viz., the raising of the age of consent from fourteen to sixteen, the numerous cases of abduction justify change in the law as proposed.
3. Yes, crimes of seduction and rape are frequent in my part of the country. I don't think that the amendment of the law made in 1925 raising the age of consent to fourteen has prevented or reduced to an appreciable extent cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I think the following among other measures may make the law effective :—
 - (a) Raising the age of consent outside the marital state to eighteen. In my opinion at the age of sixteen a girl, particularly in a country like India where female education has made so little progress does not develop sufficient judgment or discretion to take into consideration the consequence of the act to which she may be induced to give her consent.
 - (b) Strict enforcement of the provisions of section 368 of the I. P. C. Kidnapped or abducted girls, particularly in the rural areas, are taken from house to house for concealment. The persons in whose houses the woman is concealed are seldom prosecuted. I think that if the law is strictly enforced and these persons are prosecuted there will be a great reduction of the crime.
4. I do not think that the amendment of 1925 raising the age of consent within the marital state to thirteen years has made any appreciable change in the position in regard to the protection of the married girls against cohabitation with husbands. Public opinion has, no doubt, been stimulated in the direction of securing such protection but the change in the law had little to do with it. Marriage has been put off beyond thirteen in the upper and middle classes but this is due to economic, social and other factors rather than the change in the law.

I think that adequate protection can be effectively secured by raising the age of marriage as proposed in Mr. Sarda's Bill.
5. The usual age at which girls attain puberty in my part of the country is between twelve and thirteen. It slightly differs in different classes of society, the girls of educated families attaining puberty generally somewhat earlier than girls of working class families.
6. Cohabitation seldom takes place before puberty and this is true of all classes of people in my part of the country. Cohabitation generally takes place soon after puberty and before the girl attains thirteen years if she has attained puberty. These cases seldom come to court.
7. The practice of early consummation of marriage has very little to do with religious injunction. So far as I am aware there is no penalty for the breach of any such religious injunction.

8. "Garbhadhan" ceremony is usually performed in my part of the country. It is anterior to the consummation of marriage. It is performed after the attainment of puberty and soon after it.

9. The attainment of puberty is not always a sufficient indication of physical maturity to justify consummation of marriage. It depends on the health of the girl. No hard and fast rule can be laid down as to the time when a girl's physical development may be considered to be enough to justify consummation of marriage without injury to her own health and that of her progeny. A fairly healthy girl is fit for consummation of marriage at fourteen and to bear child at sixteen without injury to her health and that of the child. I have, however, seen very healthy girls who have borne children at seventeen and even later but whose health has, seriously suffered after the birth of two or three children, the intervals of birth being a year or so.

10. At eighteen.

11. I know of numerous instances where the girl and her progeny have suffered seriously in health due to frequent child birth. As a general rule the birth of the first child if it takes place at the age of fifteen or even fourteen does not affect prejudicially the health of the mother or the child. It is frequent child bearing that is responsible for injury to the health of the mother and her progeny. If the girl does not possess good health the birth of the child at the age of thirteen, fourteen or even fifteen is likely to seriously affect her health. The health of the mother is the most important factor. Bengalee girls particularly of the upper and the middle classes, generally speaking, do not possess robust health.

From observations I have come to the conclusion that the average Bengalee girl is not fit to bear child before sixteen.

12. I do not consider that early consummation and early maternity are wholly or even mainly responsible for high maternal or infantile mortality. In my opinion the general decline in the health of our people due to hard economic conditions, unhealthy environment as in cities, the absence of pure food are mainly responsible for high maternal and infantile mortality. These conditions affect the health of the females more seriously than that of males due to the purdah system. I have seen that girls of families of moderate means in villages are far more healthy than their sisters of families of the same condition in the congested cities and towns.

13. There has been a further development of public opinion in my part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925. It is, however, confined only to the educated classes.

14. No.

15. Yes, difficulties have been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the I. P. C. These difficulties can only be minimised by a more strict enforcement of the law relating to the reporting of birth. Birth registers are at present kept in a rather slipshod way.

16. I do not think that the difficulty or margin of error in determining the age will be materially reduced or minimised if the age of consent be raised to fourteen years. If it is raised to sixteen, the difficulty will be materially reduced.

17. Yes, I would separate extra-marital and marital offences into different offences. I agree that the nature and amount of maximum punishment for extra-marital offences as laid down in section 376 of the I. P. C. are adequate. But I think that the punishment prescribed for marital offences in the proposed section 376A is unduly severe. I would substitute one year's imprisonment for the two years prescribed in the section.

18. I agree that the procedure prescribed in the proposed law is unobjectionable.

19. I think that the existing safeguards are sufficient.

20. I consider that the legislation fixing the minimum age of marriage is likely to be more effective than legislation fixing a higher age of consent for marital cases. The alternative suggested by me is in consonance with the public opinion in my part of the country.

21. The progress of social reform by means of education and social propaganda is going on but I think the strengthening of the penal law to secure the object in view is also necessary.

Oral Evidence of Mr. M. K. BOSE, Chief Editor, Amrita Bazar Patrika.

(Calcutta, 21st December 1923.)

Chairman : How long have you been editor of Amrita Bazar Patrika ?

A. I have been connected with this paper in one or other capacity for the last 10 years.

Q. And you are its chief editor for the last 3 years ?

A. Yes.

Q. In your answer to Question No. 6 you say that cohabitation generally takes place soon after puberty and before the girl attains 13 years. Do you mean to say that irrespective of age as soon as puberty is attained cohabitation takes place ?

A. Yes.

Q. Do you know of any community where cohabitation takes place before puberty in any class of people ?

A. I have seldom come across such cases. When I was a pleader a case tried at the sessions court came to my notice where consummation had taken place before puberty and fatal results ensued. During my experience as pleader for a period of 6 years so far as I can recall only two or three cases came to court.

Q. Have you any reason to believe that there are a number of cases which do not come to court ?

A. There are cases which do not come to court but my impression is that generally cohabitation does not take place before puberty.

Q. In answer to Question No. 11 you say that we have come to the conclusion that Bengali girl is not fit to bear children before 16. You say it depends on the health of the girl and you think that the health of Bengali girls is bad, therefore as a general proposition you would say that before 16 she is not fit to become a mother. Is that so ?

A. Yes.

Q. Would you fix that as the age of marriage ?

A. Yes. It is only for that reason that I fix 16 is marriageable age. I supported the Sarda's Bill.

Q. But Sarda's Bill proposes 14 for girls and your proposition is that up to 16 Bengali girls are not fit to become mothers. What is your age for marriage ?

A. I think if you desire that consummation should not take place before 16 then the age of marriage should be 15.

Q. Would you like to have the law of age of consent raised to 16 without any law of marriage or you would rather have a marriage law ?

A. I would rather have a marriage law.

Q. You want marriage law at 15 and consent law at 16 ?

A. Yes.

Q. And age of consent outside marriage ?

A. 18.

Q. Do you think that early maternity in Bengali girls before 16 is one of the reasons of infant mortality and maternal mortality ?

A. That is one of the reasons but I do not consider it the main reason.

Q. Do you know of any community here amongst whom marriages do take place late that is after 16 ?

A. I am not aware of any.

Q. Do you think it takes place amongst the Brahmos.

A. Generally Brahmo girls are married at an advanced age of 16 or 17.

Q. Do you know many Brahmos ?

A. Yes, I intimately know some of the Brahmo families.

Q. Could you say if there is any difference between mothers who start motherhood at 16, 17 and weak Bengali girls who start motherhood at 14 or 15 ?

A. I have seen that Brahmos who live in the towns belong to cultured families. They have generally speaking poor health either due to the strain of training in schools and colleges or due to living in towns and I have seen girls in the villages in tolerably good economic conditions who have good physique and who are fit to bear children at the age of 15 or 16.

Q. But as regards town girls although they are married late, you do not think they enjoy any more advantage than the ordinary Bengali girls ?

A. Generally speaking considering the health of the Bengali girls they have not robust health. That also depends on the frequency of the child birth. If a girl who has been married at the age of 16 or 17 if she bears children at an interval of one or two years after giving birth to three or four children her health is shattered. I have come across instances, I have seen very healthy girls in Calcutta of cultured families married at the age of 17 but they have become prematurely old at the age of 20 after giving birth to 3 children. From these circumstances we have come to the conclusion that this repeated child births are more responsible for the state of broken health of the mother and more infant mortality than the fact of their starting motherhood earlier.

Q. When I ask you to compare the two I want to take only one condition and take the rest as equal that is to say I start the Bengali girl with motherhood at 13 and she gets a child every year. I take another girl who begins motherhood at 17 and she also gets a child every year. Do you think the girl of 17 will stand the strain better than the other girl ?

A. Naturally the girl of 13 is more handicapped than the girl of 17. The latter will stand the strain better.

Q. Do you think there are any other reasons besides physical reasons that marriages should be postponed and maternity should be postponed ?

A. The other reasons are education of the girls because we find that in Calcutta for instance in most of the girls institutions the upper classes are empty because a girl is married at 13 and she is taken away from the school and after marriage she is seldom sent to school.

Q. If you fix the marriage at 16 will the girls continue studies for a fairly good number of years ?

A. They will have a few years more for education.

Q. Do you think that a very large number of girls below 13 are married away ?

A. Among the educated classes and upper and middle classes girls are seldom married before 13. Generally they are married at 15 or 16. But in the lower classes girls are married at the age of 10 or 11. I have known instances of widowers of 40 or 45 marrying a girl of 10. Those cases must be put down by legislation.

Q. Are these instances where cohabitation actually takes place before puberty ?

A. It takes place among such cases.

Q. What percentage would you put the advanced classes marrying their girls after 14 or 15 or 16 ?

A. In the big cities like Calcutta for instance I think 70 per cent. of the girls are married after 13 while in the mofassil towns they are married usually at 13 or thereabouts but not before 13.

Q. You mean to say that in cities it is only about 30 per cent. of girls who are married before 13 ?

A. Yes.

Q. Do you think there is a large number of marriages every year of widowers marrying girls of 12 or 13 ?

A. Widowers generally try to have girls of somewhat mature age but there is the difficulty that girls are generally married even among educated families before they are 16. Therefore a widower cannot have a girl more than 16 years old. Because of the custom of widow remarriage not being prevalent widowers have to marry girls of 16 and among the lower castes widowers even at the age of 40 or 45 marry girls of 10 or 12 years.

Q. Besides the 2 cases that you cited when you were a pleader have you come across any other cases of girls having received injuries from their husbands during the last 5 years ?

A. No.

Q. What do you think of the health of children of young Bengali girls of below 15 ?

A. If the mother's health is good the child's health will be good. It depends on the health of the mother. I have no experience of girl mothers of 13 but I have seen mothers of 14 or 15 who were healthy and their children were also healthy.

Mr. Bhargava : In para. 3 (b) you say that when a girl is kidnapped she is not taken away to the house of the kidnapper but she is taken to the stranger's house or she is taken to the house of the relations of the kidnapper.

A. Generally the kidnapper does not take the girl to his own house for fear of detection because the police will be on the track. So they plan to take her to the house of relatives or friends and after two or three days when the police is not on the track, remove her to somebody else's house. These cases have been so frequent in this part of the country. During my experience as a pleader I have known numerous such cases.

Q. I want to know when the police deals with the actual accused why is it lenient to his relatives ? Why are they not chalaned ?

A. Because they think it is enough to chalan the man who actually kidnapped the girl.

Q. Do you think the actual reason for not chalaning is the paucity of evidence ?

A. It may be but the police might have been influenced by other considerations as well. But the law in that matter should be strongly enforced and the mere fact that a couple who have reason to be suspected have come to their house without any lawful purpose should go against the man.

Q. But if the proof is not strong you would not like the police to chalan because proof in such cases is very difficult.

A. There is no question of proof ; it is a question of presumption. If this is given as proof that the kidnapper lived at a certain person's house for the night that is quite enough.

Q. I understand the presumption will be there but where is the proof that he did go and stay there for the night ?

A. If you live in other's house for two or three days the police can have some evidence if they try.

Q. What is your experience in regard to these cases in which there are convictions for abduction and seduction ?

A. Very often they are punished.

Q. And the age of girl is generally above 14 or less than 14 ?

A. The age of the girl is generally above 14.

Q. Do these cases generally relate to widows or to unmarried girls ?

A. Sometimes widows and sometimes unmarried girls.

Q. May I understand that at present the tide of these cases has ebbed away ?

A. Now there are less cases than before. For the last six months the situation is somewhat better because of the numerous prosecutions that have been started at the instance of the Women's Protection League. These cases previously used to go without proper help because girls generally belong to poor families and the kidnappers belonged to rich families. The Women's League have rendered considerable service.

Q. Is this Women's Protection League doing work in the villages also ?

A. Yes.

Q. Has it got branches all over Bengal ?

A. They have got some branches in the eastern Districts of Bengal.

Q. Are people afraid of giving evidence ?

A. The difficulty is to get evidence because villagers are very much afraid to give evidence in such cases for fear of being molested later on.

Q. Can you suggest any other measure to make the law more effective in extra-marital cases ?

A. Except making the law stringent I cannot think of any other measure.

Q. Do you think severity of sentence will have a better effect ?

A. Yes, but it is already severe enough.

Q. As regards marital cases can you suggest anything whereby more cases may be brought to light ?

A. It is very difficult to have these cases brought to light because the parties concerned will try to avoid it.

Q. Suppose we do not have marriage law then will the consent law be a dead letter ?

A. It will have some effect.

Q. Suppose a provision like the one contained in section 107 I. P. C. is made applicable to such cases that is whenever a wife goes to live with the husband and cohabitation takes place or is suspected, the parents may be called upon to give a bond that they will keep the boy and the girl separate and unless that is done they may be sent to jail. Do you agree to that ?

A. I do not agree to that. I do not think it is desirable to ask the parties to give a bond.

Q. If you think that the law should penalise such action in marital state do you not think it is the duty of the law to prevent such action ?

A. I think the law should prevent this only by fixing the age of marriage.

Q. Supposing we are not successful in having a marriage law then the only alternative is to have some other means whereby it may be prevented and that is the only preventive measure. Can you suggest any other measure ? If you can't suggest any what do you think of this measure ?

A. I do not think the bond should be taken.

Q. Can you suggest any other measure by which such action may be prevented.

A. In such cases it must always be difficult to make the law effective because of the nature of things. You cannot put such crimes on the same level as theft or dacoity ; these are domestic matters. If bonds are taken it will be an undue interference in domestic affairs and the only measure that I can think of is to raise the age of marriage.

Q. Supposing we are not successful in having a marriage law ?

A. I don't think you have any other remedy which will be accepted by and be popular with the people. Taking of bonds won't be popular.

Q. But in the interests of the nation prevention of such crime is absolutely necessary, whether the action taken is pleasant or otherwise ?

A. We have to depend largely upon the education of public opinion.

Q. But that is so slow.

A. You can't make the law completely effective. If the law in the case of theft and dacoity has not been effective how can you expect that the law in this case should be and can be made effective.

Q. Is there no thin line between its being absolutely effective and an attempt to bring about a state of things in which it would be as effective as possible?

A. I have said that the age of marriage should be raised.

Q. If we do not have a marriage law can you suggest any better remedy than the one that I have suggested?

A. I can't suggest any other.

Mr. Mudaliyar : Are you for fixing an age of marriage by legislation at 16?

A. Yes.

Q. Do you think it will not be very violently opposed by the orthodox section?

A. There will be some opposition from the orthodox section. There is a small orthodox section and their number is disappearing. There will be some opposition, no doubt, but if you are to defer to their wishes then you cannot make any progress, any reform. Whatever proposal you may make there will be some opposition from some quarter or the other. You have to consider the majority of people and people who take interest in this matter.

Q. Shall we take it, that the non-orthodox portion will be agreeable to the age being fixed as high as 16?

A. Yes.

Q. The orthodox are not for going beyond 12?

A. No.

Q. There is a reformed section which is agreeable to go up to 16?

A. Yes.

Q. In between there is a class which can neither be called the orthodox section nor the reformed section, do you think that section will accept this?

A. I don't think so.

Q. Then you have to add that opposition also to the orthodox opposition?

A. I do not expect any opposition except from a small part of the community.

Q. What line would your legislation take? What are the penalties that you would attach to the breach of the law of marriage and whom would you punish?

A. I think the parents of the boy and the girl should be punished with heavy fine.

Q. And in default imprisonment, of course?

A. Imprisonment in such cases I don't recommend.

Q. If the fine is not paid what would you suggest then?

A. Then the alternative is to imprison the man.

Q. What would be the age of the boy if the girl's age is to be 16?

A. The age of the groom should be 21.

Q. In case the boy is over 21 and the girl is under 16 would you punish the parents of the boy?

A. Then of course the father or the guardian of the girl should be punished.

Q. Where the boy is over 21 and the girl alone is 16 or under then the girl's relation only are to be punished?

A. Because there will be difficulty in enforcing the law. The boy's father would always plead that the girl was 16. It is very difficult to distinguish between 14 and 16. It will be difficult for the father of the boy to know the age of the girl.

Q. On that line of reasoning you won't punish the priest also?

A. I won't punish him.

Chairman: Is he not an abettor?

A. How can the priest be punished?

Q. As an abettor.

A. How can you expect the priest to know the age of the party?

Q. He will enquire.

A. The priest is an outsider; how could he possibly know?

Mr. Mudaliyar: There is the horoscope and the priest sees it.

A. In marriages as they are performed now the priest is not always the family priest. He may be perfectly a stranger brought in for the purpose of celebrating the marriage. Such a man could not possibly know the age of the girl or the boy. There are family priests but how can you make a distinction between the two?

Q. We have been told that in many cases it is the priest who exercises his influence to hurry up the marriage?

A. In the case of the educated family that is not the case.

Q. In the villages we are told the priest tries to hurry up.

A. He has not got that amount of influence which Moulvies have over Moham-madans.

Q. You suggest that the age of consent in marital cases may be fixed at 16 and you say that the punishment should be reduced. What is the punishment that you would prescribe?

A. I would substitute one year for two years.

Q. Is that the punishment that you would keep throughout after 12?

A. Yes.

Q. I take it below 12 you would not interfere.

A. The punishment in that case may be somewhat severer than this.

Q. The present punishment is 10 years or transportation for life. Would you maintain it or reduce it?

A. I would leave this question of punishment to lawyers.

Q. But after 13 up to 16 you would have one year?

A. Yes.

Q. In this case would you allow the offence to be compounded?

A. No.

Q. Even with the sanction of the court?

A. No. I would not like such cases to be compounded because if it is allowed in most cases it will be compounded.

Q. But the discretion is given to the magistrate to allow the compromise or not. Supposing it is a case in which there is no injury to the girl then it will be no hardship.

A. In such cases the magistrate should have the discretion.

Q. In answer to Question No. 2 you say early marriage is common among the backward classes. What do you call the backward classes?

A. I mean the lower classes, the Chamars and Mochis.

Q. What do you mean by early marriage among them? At what age is the marriage performed?

A. It varies from 9 to 12.

Q. Immediately after marriage is the girl sent to the husband's house?

A. In some families the restriction is that they should not generally live together before the girl attains puberty. But that is not so in all cases. There is considerable danger of early consummation in these families.

Written Statement, dated 10th August 1928, of Mr. SYED JALALUDDIN HASHMEY, Tala P. O., District Khulna, Bengal.

1. Dissatisfaction with the Law as to the Age of Consent exists among the Mohammadans of advanced social views, in our part of the country.

2. There ought to be an advance on the present Law; because it has failed in its purpose of preventing consummation before the 13th year. Early consummation has often been the cause of wrecking the health of the girls, their premature death, birth of children physically weak and of stunted growth. It is sheer cruelty to the girls and an advance must be made on humanitarian, if not on other grounds.

3. Cases of seduction and rape are rare in our part of the country. I do not think that the amended Law of 1925 had any effect in reducing the cases of rape outside the marital state. The age of consent outside marital state should be raised to 18.

4. The Amendment of 1925 raising the age of consent within the marital state to 13 has been wholly ineffective in (i) postponing consummation or (ii) putting off marriage beyond 13. People as a rule are totally ignorant of it in the mufassil. The age should be raised to 15.

5. Girls attain puberty usually at the age of 14 or 15 in our part of the country. I think they attain puberty earlier amongst the high-class Hindus and late amongst the Mohammadans both of the common and of the higher classes.

6. Instances are not wanting of cohabitation before puberty and cohabitation soon after puberty is common. Such cases do not usually come to the court.

7. I would attribute early consummation of marriage to custom and not to any religious injunction so far as the Mussalmans are concerned.

9. I do not consider attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage. The proper age is 17 or 18.

10. 18 is the age at which a girl can be expected to give intelligent consent to cohabitation with due realisation of consequences.

12. Early consummation is certainly responsible to a great extent for the high maternal and infantile mortality in the country.

13. Public opinion is gradually gaining in strength in favour of an extension of the age of consent, but cannot be said to be very general.

17. Extra-marital or marital offences should be differentiated and put into separate categories. I am opposed to imprisonment for marital offences.

20. Legislation fixing a minimum age of marriage would be more effective than legislation fixing higher age of consent. Both the legislations should be passed simultaneously.

21. I am in favour of strengthening the penal Law, which is the more effective means of social reform.

Oral evidence of SYED JALALUDDIN HASHMEY, Tala P. O., District Khulna, Bengal.

(Calcutta, 22nd December 1928.)

Chairman : Are you a preacher of Mohammadan religion ?

A. We are by profession hereditary priests. We have got a large number of disciples all over Bengal and particularly in Khulna, Jessore and Faridpur.

Q. Are you their Pir ?

A. I have got my eldest brother who is in direct touch with them and I also used to go to these places often.

Q. Is he looked upon as a Murshid ?

A. The whole family is looked upon as such.

Q. Do you stay in the village or in the town ?

A. I live in my village Jetulia. I come here occasionally.

Q. Do you think that the age of consent should be raised to 15 ?

A. That is my opinion.

Q. As Mohammadan girls attain puberty at the ages of 14 and 15, I suppose the raising of the age will not affect the Mohammadans in your part of the country ?

A. That is my experience.

Q. Therefore if the law of consent goes up to 15 for consummation, I don't think the Mohammadans will be affected. Will it affect their practice ?

A. At least amongst the higher classes of Mohammadans it will not affect them.

Q. You speak of cohabitation before puberty. Is that amongst the Mohammadans or only amongst the Hindus ?

A. It is only amongst the Mohammadans of lower social status.

Q. Are they large in population ?

A. In our part of the country they will be more than 60 per cent. Generally these people marry their girls at the ages of 8, 9, 10, 11 and 12, i.e., they have early marriages.

Q. And therefore do you say that consummation takes place before puberty ?

A. Yes. I know of several cases of this nature. I am a landholder and a vakil. Generally I decide the cases of my tenants. Sometimes the girls run away from their husbands and generally they take shelter in my house. They don't go to the police or the court. They come to me and I decide the case. I know generally that amongst them when girls are married they send the girls to their husbands' houses and this is the custom amongst them no matter what the age of the girl is but the girls are unwilling to go to their husbands' houses. Whenever these girls get an opportunity they run away to their parents' houses, and these girls take shelter in our houses and I rescue them from those people.

Q. Do you then think that there is a good deal of cohabitation before the age of 13 amongst these lower classes of Mohammadans ?

A. Yes.

Mrs. Nehru : In those cases where the girls run away, have you reason to believe that there was cohabitation ?

A. That is my view. Of course I have tried to ascertain the causes of their running away. I have got my brother's wife and other relations and induce them to ask the reasons for their running away from their husbands, and I have come to know that only on account of violence from their husbands they run away.

Chairman : You want a law fixing the minimum age of marriage ?

A. You have to create public opinion first in its favour. When I go to my disciples' villages I hold meetings and tell them the evil effects of early marriage. In my part of the country they have almost given up the practice of early marriage. My own opinion is that if a law of marriage is passed in some form that will be more effective than fixing the age of consent.

Q. What would you have as the age of marriage of girls and boys ?

A. In my opinion girls should not be married earlier than 16 and boys at 21 or 22.

Q. Do you think this law of the age of consent of 13 is known amongst the people and they intentionally break the law ?

A. They are generally ignorant of the law. Educated people of course know it but females do not know it at all. I would suggest that if it is enacted the law should be published in vernaculars and should be broadcasted everywhere.

Q. Do you think there is any Quoranic injunction against raising the age of consent ?

A. I am sure there is no such law. Mohammadans are allowed to marry their girls at any age they like. If they are minors the father or grandfather will marry the girls and if they are major they will themselves agree.

Q. So if a law is made either penalising marriages or raising the age of consent, Mohammadans, on religious grounds, will not have any objection ?

A. Not at all. This they do in our part of the country because females become accustomed to early marriages and they induce their husbands to marry the girls at an earlier age.

Dr. Beadon : Do you think there is a strong feeling among the village women to have early marriages ?

A. There is not a strong feeling but when they see that the girls are a little grown up they say that the girl should be married.

Q. Do you think there is actual danger to the morality of the girl if she is not married earlier ?

A. In villages there is no such apprehension.

Q. Can you give us details of any cases of injury that you may have noticed as a result of early consummation or early maternity ?

A. I know of some two or three cases. In villages there are no medical men or expert doctor. Generally small girls die at the time of delivery but grown-up girls do not die, they stand it better.

Q. How many cases do you know in which the girls died ?

A. In my own village there was one case in 1926.

Q. What was the age of that girl ?

A. Not more than 13. She was a Mohammadan girl.

Q. Was she fairly well off or was she poor ?

A. She was a middle class girl.

Q. Was she well built or was she a weak girl ?

A. She was a healthy girl.

Q. What was the age of the husband ?

A. 26 or 27.

Q. Are there many cases where widowers of 35 or 40 marry young girls ?

A. Yes, even men of 40 are marrying girls of 10 or 12.

Q. Why do they take small girls ?

A. They cannot get grown-up girls. Though we advocate the cause of widow remarriage generally among us we do not think it is very dignified to take widowed girls.

Q. In your experience do these girls suffer more than girls who are married to young men ?

A. I have no personal experience, but I understand that will be the effect.

Q. What about children of these young mothers ?

A. They are not at all healthy.

Q. Are they less healthy than the children of grown-up mothers in the villages ?

A. Yes, I know of another girl in my village. She has now 3 sons but the girl is so very weak that she cannot attend to her daily duties.

Q. How old is she now ?

A. Not more than 17 or 18.

Q. The children are not twins ?

A. No.

Mrs. Nehru : This feeling that this law does not interfere with the religious injunction of Quorān is a general feeling ?

A. We believe that there is no Quorānic injunction or *Shariat* injunction against late marriages.

Q. Will Mohammadans generally accept it ?

A. Yes, they will accept it and I am sure in my part of the country there will be no opposition among the educated and higher classes of Mohammadans.

Q. What is the state of education in your part. By education I mean those who are educated in Western education and also those who have got Arabic education.

A. Amongst females there is no education, they read Bengali books. In almost all villages there is a *maktub*.

Q. Is that a private institution ?

A. This is a private institution. Higher class girls do not go to *maktabs*.

Q. From what age do they observe purdah ?

A. We do not allow girls to go out after 7 or 8 years but amongst villagers there is no purdah.

Q. By villagers you mean cultivating classes, because you also live in the village ?

A. I mean cultivators and other people who are not connected with high classes. In our part we do not dine with low class Mohammadans. In our part of the country, Khulna, there are two classes—*ashraf* and *atraf*, which mean high class and low class.

Q. Do you drink water touched by *atraf* ?

A. Yes, our servants are recruited from the lower classes.

Q. Do you allow them in mosques ?

A. Yes, but front rows are reserved for us.

Q. Are you discouraging it ?

A. Yes, by speeches and by written pamphlets.

Q. Can a lower class man become a *bhadralok* ?

A. If the boy is educated and is a graduate he becomes a *bhadralok* but if he is a matriculate he is not a *bhadralok*.

Q. You say that the age of consent has not been effective and yet you advocate an advance of one year. How will it become effective by raising the age by one year ?

A. If this law is translated into vernaculars and distributed in every part of the village it will become effective and if along with this marriage law is passed it will be more effective.

Q. Have you any idea of the age of attainment of puberty amongst the Hindus in villages ?

A. Girls attain puberty between 12 and 14.

Q. And amongst Mohammadans you say it is 14 or 15 ?

A. Yes. That is my personal experience.

Q. Can you explain this difference in age in any way ?

A. My explanation will be that Hindus as a custom marry their girls early.

Q. Mohammadans also marry their girls early ?

A. High class Mohammadans do not marry their girls at an early age.

Q. But high class Hindus also do not marry their girls early ?

A. In our part of the district even Hindus think it is going against the custom if they delay marriage.

Q. Does consummation take place before puberty in any of the classes ?

A. It is among the lower classes, but that is not the case among the *bhadra-loks*.

Q. You say that for breaches of the law there should be fine only.

A. I do not like that there should be any imprisonment for offences in marital relations.

Q. The present law is that before 12 there is severe punishment and between 12 and 13 it is 2 years. Instead of this you advocate fine ?

A. I advocate fine in infringement of marriage law.

Q. No, I am talking of the consent law.

A. I want fine only after 12.

Q. And before 12 what punishment do you suggest ?

A. I think the maximum punishment should not be more than 5 years' imprisonment.

Mr. Mitra : You have had occasion to visit almost all the districts in Bengal ?

A. Yes, not only all the districts but most of the sub-divisions and thanas.

Q. Therefore I presume that you give the opinion of the majority of the people in those districts in these matters ?

A. Yes.

Q. You belong to one of the noblest families amongst Mohammadans here ?

A. Yes, people think so.

Q. What age do you recommend in extra-marital cases ?

A. 18 years.

Q. You think that even the maulvis and mullahs will not consider the enactment of law as an interference with their religion ?

A. I do not think so. In all their papers both weekly and daily conducted by the Mussalmans they have raised no objection. A single paper raised objection but his arguments were met with.

Q. You approve of legislation in Turkey and Egypt in fixing the age of marriage sufficiently high ?

A. I approve of it and I think that in India it is very necessary.

Written Statement of MOULVI MOHAMMAD QUASEM of Tipperah.

1. The illiterate Mohammadans of our part of the country have no idea of the law as to the Age of Consent, while those of the advanced social views are not satisfied with the law as to the Age of Consent as it now exists.

2. The present law is not advanced enough to prevent early consummation. Early consummation has been at the root of weakness of the fair sex ; the race, as a whole, suffers degeneration and ill-health owing to the births of weak children from year to year. There ought to be a law binding upon the illiterate group of Mohammadans as well as upon the advanced classes to avoid early consummation, if the evil has to be laid aside.

3. Instances of rape and seduction are rare in our part of the country. I do not think that the amended law of 1925 had any practical effect of reducing rape and seduction. The Age of Consent outside marital state should be raised to 16.

4. (1) The amended Law of 1925 has been ineffective in postponing marriage before 13. In my opinion, the Age of Consent should be raised to 14. (3) The main object of the amendment to postpone consummation has up till now attained but little results.

5. The general age of puberty in our part of the country is 14 or 15. The girls of the Hindu community attain puberty earlier than the girls of the Mohammadans of higher and lower classes as a whole.

6. Cohabitation before puberty and soon after puberty occurs in many instances. Cohabitation before the girl's completion of 13 years also is not rare. But such cases do not come to the court.

7. I think that early consummation is a custom inevitable with the people, but no religious injunction can be attributed as lying behind it. Specially the Mohammadans cannot claim the grounds of religious injunction in such a case.

8. No.

9. The attainment of puberty on the part of girls is not a sufficient reason or indication of their maturity and physical strength. I should like to limit consummation of marriage beyond 16 or 17.

10. A girl can be expected to count upon a due consummation of circumstances from her 16th year. She can be allowed to give a consent to cohabitation at her age of 16 or 17 and not before that time.

11. No.

12. The rising percentage of infantile and maternal mortality may safely be accounted for by the reason of early consummation.

13. No.

14. No.

15. No.

16. No.

17. Marital and extra-marital offences cannot be classed under one head of punishment. Marital offences can at least be punished with fines.

18. No.

19. No.

20. Legislation fixing the minimum age of marriage will be more effective than legislation fixing the higher age, though it is an admitted fact that the opinion of the public of our part of the country will not accept the legislation with satisfaction.

21. I have every faith in the effectiveness of mass education and social propaganda in securing the object in view. At the same time I am in favour of strengthening the penal law to secure the object in view in rapid progress.

Oral evidence of Mr. MOHD. QUASEM, Barapara, P. O. Bagmara, Tipperah.

(Calcutta, 22nd December 1928.)

Chairman : What is your profession ?

A. I am a landed proprietor.

Q. In connection with your landed property you have a knowledge of the village life and the life of the village people ?

A. Yes.

Q. Are you a resident of a village or do you stay in towns ?

A. I stay in villages.

Q. Does the statement that you have given represent your personal views or of the people of the locality where you stay ?

A. I have given my own opinion after consulting all the villagers and other people.

Q. What age would you recommend for consummation of marriage ?

A. 14.

Q. You have said that cohabitation before puberty occurs in many instances. Does it occur amongst the Mohammadans ?

A. There are few cases amongst Mohammadans also before the girls attain their thirteenth year. From 12 to 13 there are some cases of consummation.

Q. Do you mean to say that if a girl has attained puberty, no matter what the age, cohabitation takes place at once ?

A. In illiterate families when a girl attains puberty it is considered that she is fit for consummation.

Q. Don't you think that the illiterate class must be a very large one ?

A. 80 per cent. are illiterate people.

Q. Now when you say that the amended law has not been effective is it because that it is not known, or what else is the reason for it ?

A. Generally the people do not know that there is such a law at all.

Q. When you said that the Age of Consent should be raised to 14, do you think that that will be known to the people and be availed of ?

A. The Government should take steps to publish these matters and then the people will follow the law.

Q. But there is a very strong motive for not bringing these cases to court and would not that remain even if the age of consent is raised to 14 ?

A. Even then there is no great chance of these cases coming to court.

Q. Is that the reason why you say in para. 20 that a law of marriage will be more effective than the consent law ?

A. Yes.

Q. What age would you recommend for marriage ?

A. 14.

Dr. Beadon : You have said in your answer to question 12 that the rising percentage of infantile and maternal mortality may be accounted for by the reason of early consummation. Can you mention to us some cases where the mother had trouble and her children had trouble, and some other particulars ?

A. I can tell you four or five instances in my own village. A girl was married at 11 and a child was born to her at 12 and 13 and the girl died and her child also died.

Q. Was she a well developed girl ?

A. I don't know that.

Q. What is the next case ?

A. In the second case it was a dead child born and the next day the mother died after the delivery. All these cases are delivery cases of low ages.

Q. Now the second that you mentioned, was she a wealthy or a poor girl ? Did she get sufficient food, etc. ?

A. The girl was a poor girl.

Q. Do you know cases in which women were fairly well off so that they could get good food, etc. ?

A. It is so in richer class of people amongst whom early marriages are also very rare. In villages the rich class of people marry their girls early, but consummation is not allowed before the proper time.

Q. In the second case that you mentioned what was the age of the husband ?

A. 20 to 21.

Q. Do you know of any case in which the husband was above 16 and the girl was below 12 or 13 ?

A. No.

Q. When did these two cases that you mentioned happen ?

A. About two years ago.

Mrs. Nehru : What is the state of education amongst the Mohammadan women ?

A. The girls learn something about religious education.

Q. Are the girls literate ?

A. Very few.

Q. Do you belong to East Bengal ?

A. Yes, and I know the village conditions also.

Q. Are there schools for girls in villages ?

A. At an interval of ten or fifteen villages now a few schools are being started.

Q. Do Muhammadan girls go to schools ?

A. Girls above 9 never go to the schools. Girls of 7 and 8 go to the schools.

Q. Is there strict purdah system amongst Muhammadan women in villages ?

A. Strict purdah is not observed but still there is a kind of purdah.

Q. Do Muhammadan women in villages go to the fields to work ?

A. Very poor and depressed class Muhammadans go to the fields to work. They are less than 2 per cent. in the villages.

Q. When you say that cohabitation takes place before puberty, do you mean to say that it occurs amongst those women who go to the fields to work ?

A. Even amongst the middle class it occurs sometimes.

Q. Is there a feeling against it generally amongst the people ?

A. Public opinion is against consummation before puberty.

Q. Is there a large number who conceal these facts ?

A. They try to conceal it.

Q. Then you have said that the girls of the Hindu community attain puberty earlier than the girls of the Muhammadan community. How do you know about the Hindus ?

A. In villages there are Hindus and Muhammadans and I know this.

Q. Can you tell me the reason why the Hindu girls attain puberty earlier than your community ?

A. I cannot give you the reason.

Q. In your answer to question No. 10 you say that a girl can be expected to count upon a due consummation of circumstances from her 16th year. What does this mean ?

A. I mean by this that a girl at her 16th year is likely to realize the consequences of cohabitation.

Q. Would she realize the consequences of cohabitation at the 16th year or at the completion of the 16th year ?

A. At her 16th year.

Mr. Mitra : Are you well acquainted with the village life both amongst the Muhammadans and Hindus ?

A. Yes.

Q. Is there anything in the Muhammadan scriptures fixing any age for marriage ?

A. No.

Q. But if for the best interest of the country a law is enacted that girls shouldn't be married before a certain age, do you think that it will go against the Muhammadan law ?

A. No. As the Muhammadan scriptures are silent on the point, enactment of fixing an age for marriage will not be against the Muhammadan scriptures.

Q. Do you think that there will be a great objection from the villagers or anything like that if a marriage law is enacted say at 14 ?

A. The villagers are generally apathetic. It is only the educated classes which stir them up and they join in the agitation. There will be no opposition from the masses, but perhaps it might be from the educated classes.

Written Statement, dated the 13th November 1928, of Babu ANNADA CHARAN ROY, Secretary, Bar Library, Noakhali.

1. I am not aware of any dissatisfaction in our part of the country with the state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.

2. (1) and (2) The law of the Age of Consent should not be retained as it is and an advance should be made on the present law, because intellectual faculties are not developed in a girl under fourteen and moral self-restraint is very rare in cases like these.

3. The crimes of seduction or rape are not frequent in our part of the country. I do not think that the amendment of law in 1925 has made any improvement on the existing state of things, as these crimes are more suppressed than published owing to a false notion of shame among the public in matters like these and for fear of social excommunication. The notion--building departments should take up the task of bringing such offenders to book through their subordinate bodies such as Municipalities, District Boards, Local Boards and Union Boards.

4. I do not think that the amendment of 1925 has been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit by either of the three ways (1), (2) and (3) mentioned in the question. In my opinion the most effective way would be to penalize child marriages, the remedies under the Indian Penal Code should also be adopted.

5. I think the girls attain puberty in our part of the country generally at the age of sixteen. I also think that it is the same among all the castes, communities and classes.

6. (1) I think cohabitation before puberty is common in our part of the country among the low caste people.

(2) I think cohabitation soon after puberty is common among all classes in our part of the country.

(3) Cohabitation with girls before 13 years of age is not uncommon in our part of the country. I have not even heard of any such case coming into court.

7. The practice of early consummation of marriage is not due to any religious injunction in our part of the country. I am not aware of any such authority and I think there cannot be any such real religious authority.

8. The ceremony is usually performed among all classes of Hindus in our part of the country. It is generally performed anterior to the consummation of marriage. It is performed generally after the attainment of puberty and shortly after it.

9. I am unable to answer this question. The medical men know it best.

10. I think sixteen would be the minimum age.

11. I know of a case in which a maid servant girl of twelve was criminally outraged by her master on several occasions and she conceived in consequence thereof. The result was that her whole physical system was deranged. The brain, the heart, the eyes, the ears and in fact every limb of her body was naturally affected. The poor girl was rescued from the clutches of her master by some public spirited young men. She gave birth to a male child which died within a month in spite of medical aids. The girl also suffered for months after the delivery but subsequently she recovered her health to a great extent under proper medical treatment. I have reliable information that another girl of tender age died of blood discharge owing to rape committed by her own husband.

12. I think early consummation of marriage and early maternity are to a great extent responsible for high maternal and infantile mortality. I also think that they are vitally affecting the physical and intellectual growth of the people.

13. I am not aware of any such development of the public opinion.

14. Ignorant women folk in our part of the country favour early consummation of marriage in their children.

15. No such case has come in my view. I think medical opinion can be relied on when such occasion arises.

16. Yes, I think so, because signs of puberty are more striking as the girls go up from thirteen.

17. The two classes of offences should be separated but the punishment may remain as it exists now.

18. It may remain as it is now.

19. There ought to be more safeguard against collusion to protect the offenders but there is already sufficient safeguards in the code against extortion.

20. I do not think so, as fixing the minimum age of marriage would be more effective and the public opinion here is more in favour of the latter.

21. The progress of social reform by means of education and social propaganda will no doubt bring about a radical cure but it will take a long time and so I think in the interest of the nation, strengthening of the penal law will be essential in the meantime.

Oral evidence of Babu Annada Charan Roy, Secretary, Bar Library, Noakhali.

Calcutta, 22nd December 1928.

Chairman : Are you the Secretary of the Bar Library, Noakhali ?

A. Yes.

Q. You are chairman of the district board ?

A. Yes.

Q. How long have you been chairman ?

A. For the last 3 years.

Q. In that capacity have you to go about villages ?

A. As a touring officer I have to go to the villages.

Q. I suppose you have been at the bar for a long time ?

A. Yes, for about 20 years.

Q. In answer to question No. 5 you have stated that the age of puberty in your part of the country is 16. Is that correct ?

A. The average age of attainment of puberty is 14.

Q. Are there any particular communities in your part of the country which have necessarily post-puberty marriages ?

A. No.

Q. Would you say that marriages before puberty as a rule are general ?

A. That is so among the Hindus.

Q. Do you know anything about Mohammedans ?

A. Among them it is generally after puberty ?

Q. You have stated in answer to question No. 6 that cohabitation before puberty is common in our part of the country among low caste people. Which are the low caste people ?

A. Dhobis, weavers, barbers, tailis, gowalas and even shah community.

Q. You say that cohabitation with girls before 13 is not uncommon in your part of the country. Does it happen in a large percentage of cases or in a small percentage of cases ?

A. In a large number of cases.

Q. Would you put that over 50 per cent. ?

A. Yes.

Q. It might be taken that statutory law of 13 is hardly known in this part of the country ?

A. It is hardly known because hardly any cases come to court.

Q. Why do you think they do not come to court ?

A. Out of delicacy and because it is a case between the husband and wife.

Q. Do you prefer a law of marriage to raising the Age of Consent ?

A. Yes.

Q. What age do you suggest for marriage of girls ?

A. 14.

Q. And for boys ?

A. 20.

Q. Are you at all in favour of a law of consent ?

A. Yes.

Q. How far would you raise it ?

A. To 16.

Q. Is there a large number of people in your part of the country who hold orthodox opinions ?

A. It is not large.

Q. Have you got any particular sects of Brahamans amongst you ?

A. As a rule all the Brahamans are against it.

Q. Do they think pre-puberty marriages essential ?

A. Yes.

Q. Amongst them also before 13 some girls may be consummated ?

A. Yes.

Mrs. Nehru : In answer to question No. 3 you say that nation-building departments should take up this task of bringing such offenders to book through their subordinate bodies such as municipalities, district boards, local boards and union boards.

Q. Can you give me any details of what you suggest ?

A. The District Board or municipality as the case may be should prosecute. The chairman, or some special officer may be appointed for that purpose. There are various subordinate bodies under the municipal boards. There are the district boards, and under the district boards there are the local boards, and under the local boards there are lots of union boards. There are representatives of the union boards from almost every village and the chowkidars and dafadars are to a certain extent under the control of the union boards. For the present they are not so much under the control of the union boards, but there is some amendment of the law to that effect.

Q. They can get information through these agencies ?

A. They generally give information to union boards of births and deaths, and union boards can go through this information and bring it to the notice of the local board or district board.

Q. Do you think that the information brought by chowkidars and dafadars will be correct ?

A. There will be a preliminary enquiry before prosecuting a man. Whenever there is a complaint the union board can hold an investigation, and if they report the case to be true the district board authorities should prosecute the offender.

Q. Who is to investigate ?

A. The union board authorities.

Q. They have to investigate and they have to launch a complaint. Who is to try ?

A. The ordinary courts.

Q. Do you think this suggestion of yours will be in consonance with public opinion ?

A. I think so.

Q. Will there be many cases in which these boards will have to launch complaints ?

A. At first there will be many cases, but afterwards when the offenders will be punished the cases will gradually decrease.

Q. This ceremony of garbhadan, you have said, is performed among all classes of people. By all classes do you mean the educated classes, the low classes and all castes ?

A. Yes.

Q. Somebody told us that they do not even know the word garbhadan leave alone the ceremony that they have to perform ?

A. It is performed by all classes.

Q. Is it a religious ceremony ?

A. Yes, priest is brought and he recites mantras.

Q. Are you talking of the Brahmins or all classes ?

A. I am talking of all classes, Kshatriyas, Vaishyas and Sudras. There are only few exceptions ; those who are advanced dispense with this.

Q. You want to separate the extra and intra-marital classes, but you want to keep the same punishment. Then do you want the separation in name only ?

A. I would like it to be the same offence.

Mr. Bhargava : In reply to question No. 19 you say that there ought to be more safeguards against collusion to protect the offenders. Will you suggest any safeguards against collusion to protect the offenders ?

A. Some punishment should be given to those who collude.

Q. Will you give some concrete shape to the suggestion ?

A. I suggest there should be some punishment provided for those who collude to suppress the offence.

Q. Would you suggest that parents of the boy and the girl should be punished ?

A. Parents, relatives and neighbours should be punished if they collude.

Q. What is the duty of neighbours. Supposing a neighbour does not report that an offence like this has taken place, or supposing he does not know, he should be punished.

A. When an offence of this nature takes place sometimes it is known to the neighbours and sometimes they come and conspire to keep it secret.

Q. So you think those neighbours ought to be punished ?

A. Of course and relations, parents and neighbours if it is within their knowledge or when they collude with the females to suppress the offence, should be punished.

Q. Would you like first of all, before punishing these people, that an obligation may be placed on all such people to report such sort of crimes to the police or to any other recognised body ?

A. No.

Q. Unless you place such obligation you cannot punish them. The obligation should be on all persons who may be aware of the commission of the offence ?

A. I do not go so far.

Q. Then you say in reply to question 3 that these crimes are more suppressed than published owing to a false notion of shame among the public in matters like these and for fear of social excommunication. Am I to understand that the relations of the girl on whom the offence has been committed are excommunicated and the relations of the offenders are not touched ?

A. Yes.

Q. What is the fault of these poor people ?

A. That is the irony of the whole thing. I emphatically say that in 99 per cent. of cases the members of the family whose girl is seduced are excommunicated and not the family members of the offender.

Q. Instead of sympathising with the man they turn him out of society ?

A. They generally think that by doing so the woman has fallen off her family and the family has also fallen.

Q. But in cases where the girl is not taken back, even then the family is excommunicated ?

A. Yes.

Q. How do you propose to check this evil—of course you realise the Government cannot do anything.

A. But the thing is that poor people cannot invoke the help of the law.

Q. What is the law that you are referring to in regard to social excommunication?

A. In the Penal Code I think there are some sections about it.

Q. In the law there is a section for defamation, but if the person is excommunicated for the general welfare of the community defamation does not lie.

A. There should be some definite section in the I. P. C.

Q. To what effect do you want the law ?

A. Is there no specific section by which cognizance can be taken of the offence of excommunication. Cannot there be a law like this that there should be no excommunication ?

Q. If this right of excommunication is taken away you will be weakening the force of social restraint. There is no remedy except propaganda. Is there any social propaganda in your part of the country ?

A. There is no special society for this but generally the public feelings are aroused and the girls are taken back. That happens where there are advanced people.

Q. When the girl is taken away, is she converted to generally to the religion of the offender ?

A. Of course when the offender is a Mohammedan generally there is an attempt immediately after the offence to convert her into Islam.

Q. Are those seductions due to the spirit of converting people ?

A. I do not think so.

Q. If a Mohammedan converts a Hindu girl is she taken back by the Hindus by way of *shudhi* ?

A. Sometimes she is taken back, but those cases are rare. Now attempts are being made to take them back by *shudhi*.

Q. You have said that district boards should bring such offenders to book. Is your district board doing some sort of propaganda work ?

A. No, it has not yet done anything.

Q. Do you think it should do it ?

A. Yes, I think it ought to do it.

Q. How should it be done ?

A. If the Local self-Government imposes this duty on the district board they will do it.

Q. But before you prosecute people you must disseminate knowledge that this is an offence. You must arouse the social conscience of the people first ?

A. Yes.

Q. Do you think your district board will undertake this work ?

A. District board will not undertake this work unless it is imposed on them by Department.

Q. According to you this evil of early consummation is very much rampant in the villages and in the rural areas and generally speaking these members of the rural parts also must be practising early consummation. So that you are practically arming those very people among whom this evil exists to prosecute offenders ?

A. Generally nominations and elections of these members are made from advanced people.

Mr. Mitra : Is there any class among the Brahamans who think that marriage should take place before puberty ?

A. People think that marriage should take place before the attainment of puberty.

Q. If there be any law fixing the age of marriage at 14 do you think it would wound their religious feelings ?

A. I do not think so.

Q. You do not think there will be really serious objection to this ?

A. There will be some sort of protest by the die-hards here and there.

Q. Do you know that there are texts which enjoin that the girl should be married before she attains puberty ?

A. No, I have not heard of any. On the contrary I think the injunction is that a girl should be fully developed before she is married.

Q. Is it not a fact that in your part of the country in more than 50 per cent. of cases girls have consummation before they attain puberty ?

A. Yes.

Q. Can you give us some instances in which consummation has resulted in serious injuries ?

A. About a fortnight ago one widower was arrested by the police and sent up for trial. He is 24 years and his wife is 11 years. It is not known when they were married. The charge against him is that the husband wanted to violate the wife and she resisted and ultimately the husband was enraged and the girl was threatened to death. The case is sub-judice.

Q. But in that case there was no violation ?

A. I cannot say but it is said that the body of the girl was cremated before any examination could be made.

Q. Will you tell us some details of the sensational case at Tipperah ?

A. The offender has been committed to sessions. In that case Nawabzada stands charged for the offence of rape. The prosecution case is that he violated his maid servant a girl of tender age. It is said that she was under-age and Nawabzada let her drink and then raped her. Somehow the police got scent of her and then the matter was hushed up. The girl was sent to the Zanana hospital at Comilla wherefrom she was taken away by some device in order to suppress the crime for which two other Nawabzadas were charged before the magistrate and who were relations of the offender. It is alleged that she was spirited away from the Zanana Hospital at Comilla. After that the magistrate got scent of her and sent the Deputy Superintendent of Police. After investigation the Nawabzadas were arrested and sent to jail. In the meantime a preliminary enquiry was held and the offender has been committed to the sessions and those who took away the girl are also under trial for the other offence. The girl was of tender age about 11 or 12. The girl was afterwards produced in the court and in her statement she said she does not remember anything as she was in a drunken condition.

Q. What is the caste of the girl ?

A. She is a Mohammedan.

Q. So these cases are not rare where consummation takes place at an early age both in marital and extra-marital cases ?

A. No.

Q. How do you think the Hindus will take a law fixing the minimum age of marriage at 14?

A. There will of course be some objections here and there but the people will soon take it as a settled fact.

Mr. Mudaliyar : What was the punishment given by the court in the first case that you referred to?

A. It was not brought to the court. Some public spirited youngmen rescued the girl stealthily. She was brought to the town and kept in custody.

Q. But why did they not prosecute the man?

A. Because it would be very difficult to prove this thing.

Q. You refer to a number of cases in your part of the country where consummation takes place in marriage before puberty. What may be the age of the wife in those cases, generally speaking?

A. 12 or 13.

Q. That means in those cases the offence has been committed as a matter of fact but the cases are not brought to court?

A. Yes.

Q. What would you suggest to bring these cases to court. What is the good of advancing the age when the cases even under the present law are not brought to court. You have already suggested that the age of marriage should be fixed, besides that what other suggestions have you to make? Could you suggest for instance that these cases should be made cognizable?

A. I think so.

Q. You have no special fear that any vexatious proceedings will be instituted if the offence is made cognizable and that no harassment of the innocent parties will take place?

A. There may be a case here and a case there and gradually that will go, I have said that there are already enough safeguards against such misuse or abuse.

Written Statement, dated the 8th August 1928, of Babu JOGINDRA CHANDRA CHAKRAVARTI, M.A., B.L., M.L.C., Vakil, High Court, and Chairman, Dinajpur Municipality.

No. 21. I am decidedly of opinion that the penal law should not be strengthened to secure the object in view and that social reform in the desired direction can be effective only by means of education and social propaganda. It is an admitted fact that amongst the educated classes great changes have taken place within the last 20 or 25 years in respect of the ages at which girls and youngmen are married and child marriages are gradually becoming things of the past. As you have permitted an expression of opinion on Mr. Sarda's Bill, I take the liberty of pointing out that that Bill is open to the objection that the Bill proposes to invest the legislature with a function which is beyond its legitimate jurisdiction. India is a country which is inhabited by people of various classes and communities who are ruled by injunctions contained in their respective scriptures. Marriage is a socio-religious function and with the Hindus it is a sacrament. The relationship between a husband and a wife according to the Hindu ideal is very different from that of the Mussalmans or the Christians. It has never been the policy of the Indian legislatures to legislate upon matters affecting the social or religious usages of the people for the obvious reason that the proper sphere of action of the reformer should be not the legislative chamber but the society outside. For practical purposes again, the object in view of Mr. Sarda's Bill has already been achieved amongst the educated classes, even amongst the orthodox section, without any interference by the legislature and girls are scarcely married now before they have attained the age of 14 years and youngmen are generally married at an age much higher than 18. In the case of the masses a change is taking place as they generally prefer to follow

the practices of the higher classes and it is wrong on principle, according to my humble opinion, to penalise marriages between boys and girls who have not attained the age of 18 and 14 as laid down in the Bill. There are evils existing in every society and even in the European countries there are social evils which are condemned by many people, but none has yet taken it upon himself the task of purifying society by legislation. Then again from a practical point of view a prosecution under the proposed law will always involve an investigation regarding the age of the girl and will result in ruining the peace and happiness of a family although the prosecution may not end in a conviction.

The reasons given by me above against Mr. Sarda's Bill apply also to my objection to the proposal of further raising the Age of Consent.

I now pass on to the other queries in the order in which they stand in the questionnaire.

1. So far as I know there is no dissatisfaction. As a matter of fact there is no demand for a change.

2. In my opinion the circumstances that will justify the retention of the present law, are the following :—

(i) In practical experience I have not found that the present age limit should be increased.

(ii) So far as intercourse by a husband with his own wife is concerned the law is practically a dead letter and must remain so far all practical purposes.

(iii) Unless the circumstances are such that a change is considered to be urgently necessary the law should not be changed.

3. Not frequent but occasional. I do not think that the amendment of 1925 has had any appreciable effect in the line indicated. It is not my experience that in cases of rape, the defence of consent is put forward. Therefore even if the age is raised to 16 it will not have the effect of preventing or reducing the crime. The same remark applies to cases of seduction. I do not think it is possible to suggest measures which can appreciably reduce cases of rape and seduction. At any rate the measures proposed is not likely to achieve the desired result.

4. (1) I do not know.

(2) I do not think public opinion was stimulated in that direction. I consider that in the case of marital relationship the amendment of 1925 has not affected anyone. In fact prosecutions are very rare. I know only of one case in which the husband was prosecuted but the wife denied that there was any intercourse. The law here will ever remain in effective.

(3) Marriage is being put off beyond 13 years not on account of the law but on account of growing aversion to early marriage.

5. Ordinarily between 12 and 13. The same in all societies.

6. (1) No.

(2) Yes.

(3) If puberty is reached before 13, my idea is that cohabitation is not postponed until the completion of 13 years by exact calculation. People do not make exact calculations of age of girls. I know instances where the date of birth of a girl cannot be exactly ascertained.

Such cases do not come to court.

7. Religious injunction and age-long custom, in the case of consummation of marriage after puberty.

I cannot off hand quote the authority and the nature of the injunction.

8. Yes usually performed.

It is performed after the first attainment of puberty at the interval of only a few days after the first appearance. It coincides with the consummation of marriage in theory but in practice I do not think it generally does coincide.

9. I am not a medical man. This question can be best answered by a medical man.

10. I cannot answer this question as I think that girls in any country, of whatever age, when they give consent to cohabitation do never do so after duly considering the consequences of co-habitation.

11. A question for a medical man to answer.

11. A question for a medical man to answer.

12. No. There are various other causes for high maternal and infantile mortality and for the deterioration of the health of the people.

Conditions of living, especially in big towns, want of sufficient nourishment, want of milk, poverty, are some of the principal causes.

13. No.

14. No.

15. Difficulties are often experienced. They cannot be removed entirely but more strict methods of keeping birth registers may be of use.

16. No. It will remain the same.

17. Yes, I would.

In case of extra-marital offences I would retain the present punishment.

In case of marital offences I would abolish imprisonment and retain the fine.

18. In case of trials for offences within the marital state I would recommend trials in camera.

19. Suggestions of no other safeguards occur to me.

20. I am opposed to fixing a minimum age of marriage by legislation. I have stated my reasons in full in answer to query No. 21 in the beginning. It should not be overlooked that amongst the Hindus consent of the girl to her marriage does not arise. The girl's parents or guardians find her husband. Therefore marriage before 14 is not very undesirable as the girl has to accommodate herself to the husband's family. Consummation before puberty is prohibited amongst the Hindus. So standardisation of the age of marriage cannot be defended from this point of view.

Oral evidence of Babu J. C. Chakravarti, M.A., B.L., M.L.C., Vakil, High Court, and Chairman, Dinajpur Municipality.

(Calcutta, 22nd December 1928.)

Chairman : How long have you been at the Bar ?

A. Since 1896.

Q. And in the Council ?

A. This is the second time.

Q. How long have you been connected with the municipality ?

A. For about 20 or 25 years with slight breaks in the middle.

Q. I understand that you are neither for an advance nor for legislation at all in this matter. Is that right ?

A. Yes.

Q. One of the reasons to support this you have said is that it has never been the policy of the Indian legislatures to legislate upon matters affecting the social or religious usages of the people for the obvious reasons that the proper sphere of action of the reformer should be not the legislative chamber but the society outside. May I point out to you that there has been a law of Suttee for instance ? That was also a religious usage.

A. There have been cases.

Q. Supposing we have medical evidence that the present day girls are not fit to be mothers before 16 and that before that age their infants also suffer would you then think that the legislature should step in ?

A. In what way ?

Q. By enacting a law fixing the minimum-age of marriage or by raising the Age of Consent ?

A. I don't think that the legislature should go into the matter and enact a law and leave these cases in the hands of magistrates.

Q. Does that apply to the Age of Consent or the age of marriage ?

A. Both.

Q. But the law of marriage would be simply preventive ?

A. The ultimate result will be that if marriage takes place when the age of the girl is 13 years 11 months and 29 days the parents will be hauled up. I do not want that.

Q. Would you let the evil remain as it is ?

A. I will leave it in the hands of those people who want to bring about social reform by propaganda and other means.

Q. But they have despaired about it. The evil has been growing. It has been there for the last 20 or 30 years.

A. I am disposed to this that the evil is growing less and less. Sometime ago consummation of marriage took place earlier. The marriageable age has been gradually rising.

Q. Certainly not beyond puberty ?

A. Yes, beyond puberty.

Q. What is the general age of marriage ?

A. Between 13 and 15. Even among the educated classes it was far less than what it is now. Among the rest also it has been rising.

Q. Upto what ?

A. I can't tell you exactly, but I think they do not marry their girls below 11 or 12.

Q. But have you reason to believe that consummation takes place below 13 in many cases ?

A. May be.

Q. If it is found that consummation at that age with maternity is harmful don't you think we should legislate ?

A. My idea is that social customs do not enjoin that there should be consummation before puberty.

Q. There are many cases in which this custom is violated. A certain time used to elapse between puberty and consummation before now. But does not maternity begin now early at 15 or at 14 ?

A. That is not my experience.

Q. When does consummation take place among the higher classes ?

A. Not earlier than 13.

Q. Are there any cases within your knowledge which have resulted in trouble to the mother on account of consummation at a tender age, or there has been any labour trouble ?

A. I have not noticed that.

Q. What is the percentage of educated classes and the lower classes amongst whom marriages take place late and amongst whom marriage takes place early ?

A. It is difficult to give the percentage.

Q. More than 80 per cent. must be uneducated.

A. What takes place generally in society is that the customs that are followed by the educated people are gradually adopted by the uneducated. When the educated classes had their girls married at 8, 9 or 10 they also used to do that, but now they also are raising the age.

Q. But they have good as well as bad customs ?

A. Quite so.

Q. I understand you think that under no circumstances, whatever may be the extent of the evil, is the legislature justified in stepping in ?

A. I am opposed to legislation. I won't allow the legislature to interfere.

Q. In question No. 20 you say, marriage before 14 is not very undesirable as the girl has to accommodate herself to the husband's family. Of course you don't take the medical aspect of the question into consideration there.

A. Other aspects have to be taken into consideration. The social customs, the state of society and all that sort of thing has to be considered.

Q. Would you have a law prohibiting drink ?

A. I don't mind if drink is prohibited.

Q. But would you advise, would you urge and would you advocate such a bill ?

A. I have not considered that question in that shade. I am a Hindu and I would personally support a measure like that. There may be other people who may be very largely opposed to it.

Q. You may not take the initiative, but would you like the legislature to enact such a law ?

A. I have not considered that question.

Q. You say, "consummation before puberty is prohibited amongst the Hindus. So standardization of the age of marriage cannot be defended from this point of view." Nobody has suggested an age that may be before puberty. The ages that are suggested for an advance are 14 and over. Standardization of the age cannot in any case bring pre-puberty connection.

A. There cannot be any fixed age of puberty. It may be 13 or a little over it may be 14, and no standardization is possible, therefore.

Dr. Beadon : In answer to question No. 10 you say, I cannot answer this question as I think that girls in any country of whatever age when they give consent to co-habitation never do so after duly considering the consequences of co-habitation ! Do you think that the man should be punished whatever the age of the woman might be ? Upto what age should the girl be protected ?

A. Not less than 16.

Q. You think the girl would be able to give intelligent consent at 16 ?

A. Yes.

Chairman : Is it desirable to punish the man if he has intercourse with a girl who is below 16, and after 16 it may be considered that the girl consents ?

A. I am doubtful whether intelligent consent would imply that.

Dr. Beadon : Upto what age should the girl be protected ?

A. It ought not to be less than 16.

Mrs. Nehru : You say, "there are evils existing in every society and even in the European countries there are social evils which are condemned by many people, but none has yet taken it upon himself the task of purifying society by legislation." What is this Prohibition Act of America ? What do you consider the Opium Act to be ? What is the Excise Act ? Are these not attempts on the part of legislature to purify the society ?

A. That is not the sort of social evil that you are contemplating here.

Q. The Age of Consent is an all-world enactment. What would you consider that to be ?

A. In intra-marital cases or extra-marital cases ?

Q. In extra-marital cases ?

A. I am not opposed to that.

Q. You have made a general statement that no legislature has attempted to purify society by enacting laws. What do you consider the examples that I have given to be ?

A. In that sense the whole Indian Penal Code is an attempt in that direction. What I say is that that is not the sort of social evil that we are contemplating here.

Q. Drinking and opium smoking are such offences. Won't you bring them under the heading of an attempt to purify society ?

A. There are various kinds of social evils which the State never takes into head to remove. For instance they never attempt legislation to purify the society of ball dancing, etc.

Q. Night clubs and such other things are being prohibited by legislation. Come nearer East and follow the example of Afghanistan, Persia, Turkey and so on.

A. A distinction must be made between a free country and a subject country. When you have your own Government you may consider many things to be evils, which you may purify through the machinery of the legislature.

Q. When the Government would be ours, would you favour legislation ?

A. Then I would consider.

Q. In your answer to question No. 2 you say, "in practical experience I have not found that the present age limit should be increased." What do you mean by practical experience ?

A. I say so because the law has practically been inoperative so far as marital cases are concerned.

Q. That makes you think that even if the age is raised the law will continue to be ineffective ?

A. Yes.

Q. Do you have the same opinion as regards the law of marriage ?

A. To a great extent it will be ineffective.

Q. Can you give me any details of this case that you have referred to where the husband was prosecuted and the wife denied that there was intercourse ? By whom was the husband prosecuted ?

A. The husband was prosecuted at the instance of the medical officer who attended the girl.

Q. The medical officer made the complaint ?

A. I am not sure about particulars. The medical officer sent the information either to the police or the magistrate and the action was taken.

Q. In what class of people did that case take place ?

A. Lower class.

Q. What was the caste ?

A. I don't know the caste exactly.

Q. What was the age of the girl ?

A. It was about 11.

Q. When was that ?

A. It happened within the last two years.

Q. You say, "Garbhadan ceremony coincides with the consummation of marriage in theory but in practice I do not think it generally does coincide." Do you mean to say the ceremony is performed without consummation taking place ?

A. Yes. Union takes place sometimes before and sometimes afterwards. People are not so strict in observing this ceremony now. They were strict before.

Mr. Bhargava : You say so far as the lower classes are concerned the marriages take place at about 10 or 11. Is that so ?

A. Yes.

Q. In almost 85 per cent. of cases or 100 per cent. cases it is so ?

A. I will not say that, because I know of cases in which girls have been married beyond 12 and 13.

Q. Among lower classes ?

A. Yes.

Q. What would you put the percentage at ?

A. It is very difficult to give percentages.

Q. Among higher classes about half take place before the girl is 12 ?

A. Not in my part of the country. I think the percentage is over 80 now.

Q. Then I understand in the upper classes the religious injunction of marrying the girls while they are quite young has gone away ?

A. Absolutely. Even among the Brahmins it is no longer observed.

Q. As regards the lower classes they do not know anything about these injunctions ? Among them it is custom only that is followed ?

A. Yes.

Q. Therefore so far as religious injunctions are concerned there cannot be any question among both classes ? It is only a question of custom only.

A. Practically so.

Q. You say, it has never been the policy of the Indian legislatures to legislate upon matters affecting the social or religious usages of the people. Do you stick to that ?

A. Yes.

Q. There was the Widow Re-marriage Act, the Religious Endowment Act, even the Majority Act. Don't you think they were against your religion ?

A. The Widow Re-marriage Act does not say that all widows should be re-married.

Q. But it makes the marriage legal whereas it was not so before. That is a violation of your religion. Would you not say that ?

A. Those who consider it to be a violation, do not take any protection under the Act.

Q. A person marrying a widow does not cease to be a Hindu. His progeny is legal. While under the Hindu law it would not have been so. That is an innovation that has been super-imposed. The Majority Act is both against the Hindu and the Mohammadan law.

A. That age is only for certain purposes.

Q. For all purposes of civil contract ?

A. I do not place that in the same category as the present law.

Q. That is a kind of interference in religious matters.

A. If there has been interference there that does not justify that there should be interference in all matter of religion. If it is for the good of the society that we enact a law.

Q. Would you agree to interference if it is for the good of the society ?

A. This is an abstract question which has no bearing on the question under discussion. This is a matter in which I do honestly and sincerely believe that this legislation will not be for our benefit.

Q. Would you then concede that those who honestly believe that it will be for our good should support it ?

A. I have no quarrel with them.

Q. Are you in favour of retaining the present law or advancing the age ?

A. Retaining it.

Q. Why do you want to retain it ?

A. One of the reasons mentioned by me is that in my experience I don't think any change will effect the matter. The law will be ineffective.

Q. You say, that it will be ineffective and so let it be there ? I want to know your reasons why you want to keep the law as it is, why not abolish it ? Is it your idea that the girl should be protected till 13 ?

A. I am not going to abolish the law. My idea is as the law stands there is hardly any effective protection to the girls.

Q. Suppose by some measures the law is made effective would you then approve of an increase ?

A. My idea is that you cannot by legislation give any protection in a case like this.

Q. If you have a marriage law ?

A. That is another matter. So far as the consent law is concerned I don't think cases will come before the courts.

Q. Then I think you would like to have a marriage law before you think of this law ?

A. I have said I am against fixing the marriageable age.

Q. Why do you think that it will be ineffective ?

A. If the age is fixed at 16 and a girl is married at 15 years 11 months and 29 days, that will be a breach of the law.

Q. If the law is there she must be protected.

A. That would be disastrous.

Q. Are you in favour of retaining the law of kidnapping as it is at 16 ?

A. Kidnapping is a serious offence which stands on a different footing altogether.

Q. Kidnapping has reference to taking away a girl or a boy upto a certain age ?

A. You cannot fix the same age in the case of marriage. One girl may be fit for marriage at 14 and another girl may be fit at 15. How can you fix one precise age under which no girl should be married. It is a matter between me and the society and we will settle it. Why should the legislature interfere ?

Q. Could you fix any other standard except the age ?

A. That is why I am opposed to it.

Q. Would you like to raise the age of marriage by means of propaganda ?

A. Yes.

Q. What age would you like to progress to ?

A. I won't fix any age. The age is already gradually rising.

Q. Where would you stop the propaganda ?

A. I won't fix an age.

Mr. Mitra : May I take it you are against any legislation in social matters by an alien Government ?

A. Generally speaking. If any particular cases come up we can consider that, as a matter of policy I am against it.

Mr. Mudaliyar : You are a member of the Legislative Council and you know how such matters are taken through. Realising that what is your objection to an alien Government making a law in a matter like this ?

A. During the time that I have been in Council there has been no such legislation.

Q. You can realise that in matters like this it can pass only if the non-officials are in favour of it. The Government will either take an apathetic attitude or sometimes it will take an antagonistic attitude. Unless the non-officials are in favour of it such a measure won't pass.

A. That depends upon the franchise and the elections.

Q. May I take it your objection is to the nature of the representative that we sent and not the Government being an alien Government.

A. When we have our own Government we will have our own legislature and people will have confidence. I don't think if the councils had been in the hands of the Indians entirely we wouldn't have constituted the council like this. It would have been constituted in a manner in which the people would have had confidence in it.

Q. So your reason is that the present representatives are not the real representatives of the people. People have no confidence in them.

A. Not in religious and social questions.

Q. So your objections are not connected with the alien character of the Government but with the rules framed by it? If we have a purely Indian Government and the same rules continue you will still continue to have the same objections.

A. The question is so hypothetical that it is difficult for me to answer.

Written Statement of Mr. M. Azizul Haque, M.L.C., Public Prosecutor, Krishnagar.

I regret, I could not reply to the questionnaire issued by the Committee earlier, as I was busy up till the end of the 1st week of the last month in connection with the Tenancy Bill discussion in the Bengal Legislative Council. The answers to the questionnaire are now noted below.

1. There seems to be not much dissatisfaction with the present state of law as to the age of consent as contained in sections 375, 376 of the Indian Penal Code.

2. In my opinion, however, the following circumstances justify making an advance on the present law.

So far as sexual intercourse by a man with his own wife is concerned, I do not think legislation should further interfere in the matter. It lies entirely upon the growth of enlightened public opinion to achieve the result. In the present state of affairs, I should not advise any further extension of the age.

But sexual intercourse outside marital life is a matter that necessitates further looking up. It seems, it is a crude state of law which considers a person minor below eighteen for all purposes except for sexual intercourse outside marital life. Just as law protects all acts of minor and people of immature growth, law should protect a girl in her sexual intercourse if she is below a certain age when that sexual intercourse is outside marital life. I am therefore strongly of opinion that for the present, an immediate advance should be made by making age of consent outside marital state as sixteen years.

3. Crimes of seduction or rape are not much frequent in this part. I do not think the amendment of 1925 raising the age of consent to 14 years has materially succeeded in preventing or reducing cases of rape outside marital state or improper seduction of girls for immoral purposes. I would however propose to amend the law as suggested in my answer to question No. (2).

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been of much effect in protecting married girls against co-habitation with husbands within the presenting age limits. It has neither postponed consummation of marriage nor stimulated public opinion nor put off marriage beyond 13. What has however been achieved in this direction is through the pressure of economic circumstances and through growth of educated public opinion and partly through the difficulties of getting suitable matches. In Bengal, among educated and well-to-do or well-born Mussulmans, the average age of marriage of a boy is 25 and of a girl is 15 or thereabout. I have said above, legislation will

hardly be able to make any improvement in the status of married women unless there be a legislation to stop marriage below a certain age. I think, that is not a feasibility in the present state of the country.

5. The usual age of puberty for girls in this part of the country is between 13 to 15. It does not differ in different communities, though it is slightly different in different classes of society.

6. I do not think co-habitation is common before puberty, though I believe it is so, soon after puberty. The cases of breach of law do not come to court and it is only in seldom cases and where there is only fatal result that the matter is taken up to court.

7. I would not attribute it to any religious injunction but where such exists to the social and surrounding circumstances.

8. No.

9. I would not consider attainment of puberty any sufficient indication of physical maturity to justify consummation though I would not venture to dogmatise on this, as it is a medical matter. But I would consider an average Indian girl of 15 sufficiently strong to justify such consummation without injury to her own health or to that of her progeny.

10. I would consider it to be 14 to 15.

12. I consider it so. Social and physical circumstances have changed. What was possible 5 hundred years back is not possible to-day. People in those days lived in free air with sufficient direct contact with sunshine and the open, bore hard life. Things have changed enormously and it will be futile to expect the same state to-day.

13. Hardly any excepting possibly amongst a very few.

14. I believe so.

15 & 16. There have been tremendous difficulties in determining the actual age of girls in connection with offences under section 375, 376 of the Indian Penal Code. The age I have suggested will greatly minimise the difficulties. The margin of error will be much minimised if it be 16 outside marital state.

17. For marital offences I do not think the punishment should be heavy or even imprisonment. I would prefer generally a heavy fine as may be suitable in each case, except in cases where the act result in permanent injury or death. For extra-marital offences, I would suggest the present maximum to be enough though I would suggest the fine as an alternative instead of a mandatory provision.

18. There is no necessity of making any changes in procedure.

19. I would suggest all such cases to be bailable and compoundable with the permission of the magistrate or the trying court.

20. Penal legislation fixing a higher age of consent for marital cases will be in consonance with public opinion.

21. No due factor is enough. Penal law is as much needed in the progress of social reform.

Oral Evidence of Mr. M. Azizul Haque, M.L.C., Public Prosecutor, Krishnagar (Bengal).

(Calcutta, 22nd December 1928.)

Chairman : Are you the Public Prosecutor at Krishnagar, and also a member of the Legislative Council ?

A. Yes.

Q. Are you connected with any social reform movement ?

A. I am not connected with social reform movements, but I am doing social work in the district. I am the Vice-Chairman of the Nadia District Board, and Secretary of the Muhammadan Association.

Q. May I take it that the gist of your evidence is that you want the age in outside marital cases to be raised, but that you do not want to raise the age inside marital cases?

A. My point is that whether it is 13 or 15 in marital relations it will be absolutely infructuous, I do not put it on the ground that it should not be at any particular age.

Q. Do you think the present law of the age of consent is ineffectual?

A. Yes.

Q. Do you think there are cases of actual unions before 13.

A. I have said so; but there are no such cases amongst Muhammadans.

Q. What is the marriageable age of Muhammadans in your part of the country?

A. In the middle classes boys are married between 25 and 30 and girls between 14 and 16, but never before 13. The lower classes copy the higher classes.

Q. Do you think that amongst the lower classes there is no early marriage?

A. Not to that extent as amongst the Hindu community.

Q. Do you think that amongst the lower class Muhammadans there are some cases of consummation below 13?

A. Such cases are very rare.

Q. In para. 20 you have not said which of the two legislations would be more effective. You have simply said that penal legislation fixing a higher age of consent for marital cases will be in consonance with public opinion.

A. That is a debatable point. Personally I would like legislation like Sarda's Bill. But I am doubtful whether it will be possible for us to get a legislation like that, because orthodox opinion will be against it.

Q. You say that the present law of the age of consent is ineffectual. If therefore, it is possible to have the marriage law will you have it?

A. Yes; every wellwisher of the country will welcome it.

Q. What is your real apprehension as regards the law of marriage not coming to pass?

A. The orthodox view is very strongly against it.

Q. Do you not think that the Legislative Assembly members are more advanced?

A. But they have to go to the country, and that may be an argument against them.

Q. If the Central Legislature passes such a law, do you think it will be an effective remedy?

A. The law will of course be effective. But we have not yet reached that standard of public opinion wherein for a breach of the law of marriage a person can be handed over to the police. Supposing such a law is passed we will have to hand over the administration to the police.

Q. If the law is enacted you can suggest that cases should be non-cognisable, and the police interference will not be necessary.

A. But then how are you going to get any machinery to see whether the law is effective or not?

Q. There will be machinery. Marriage is a public act unlike consummation which is a secret act. Therefore the deterrent effect of this act would be very much more and people will not transgress the law.

A. I quite realise that the deterrent effect will be good. But supposing there are breaches of the law there will be very few to prosecute the people.

Q. There will be some machinery for that. There are certain local associations for instance, willing to take up such work.

A. But not in the mufassal. It should be made open to the local bodies, by an extension of the act, to take up such cases.

Q. Supposing we say that the law will take effect after a period of two years, do you not think that existence of the law will prevent breaches ?

A. On the other hand there will be cases of hardship too. For example, take the case of the Hindu society. It is very difficult to get suitable matches and a man might like to get suitable matches before that age, but your law will prevent him from marrying the girl.

Q. Do you not think that if everybody is prevented from performing marriages before the age fixed, there will be no-competition ?

A. I quite see that it will have deterrent effect ; but one has got to take the plunge and see its effect.

Q. Supposing the law is passed, do you think that in your part of the country there will be discontent and dissatisfaction to the extent of riots, for instance ?

A. There will be no riots, but there will certainly be tremendous dissatisfaction.

Q. Amongst Muhammadans ?

A. They will not be affected at all, because public opinion amongst them is confined to the opinion of a few and they can be persuaded. I come from Nadia which is the centre of Hindu culture and I feel that there will be tremendous opposition because public opinion is against it. The marriageable age is really increasing in our part of the district. But it is not in a very large majority. Along with it there is the pressure of economic circumstances. These are automatically raising the age of marriage.

Q. With reference to question 11, do you not know of any cases amongst Hindus where girls have become mothers at 13 and 14 ?

A. I see every day around me, quite apart from my professional experience, that girls are becoming mothers at an age at which they should not be mothers ; and when I also see that one after the other children are coming into the family, I feel that it is impossible for the mother to stand the strain.

Q. Do you think that early consummation is by itself an evil, or do you think that only early maternity is an evil ?

A. I think both.

Q. Do you think that it has a bad effect on the mother and children ?

A. Yes ; yesterday I saw a girl who was very well developed in her former days, but immediately after motherhood she has very much gone down, I consider that one of the reasons for the bad health of the people of this part is due to early marriage. I quite realise that in ancient times there were early marriages and people were quite healthy. But the circumstances are now quite different. The economic conditions have changed. Formerly we were not required to work from 11 to 15. We have therefore to adjust ourselves according to modern needs.

Q. What age would you consider safe for motherhood ?

A. 15 to 16. I think girls are sufficiently developed at 15.

Q. Do you think amongst Hindus any propaganda is going on about increasing the age of marriage ?

A. No. But the pressure of economic circumstances are telling amongst everybody.

Q. What age do you think we can fix for marriage so that people may not be antagonistic ?

A. I think 12 would be a fair age.

Q. And for boys ?

A. It can be any age. It is not as much the problem of the boys as of the girls.

Q. But there should not be very great disparity between the boy and the girl

A. I think it should not be less than 20.

Q. What age would you have in extra-marital cases ?

A. It should be 16 years. I have all along considered that it is a 'crude state of law which considers a girl a minor for all other purposes except this.

Q. Do you not think that the self-same reason applies to marital relations also ?

A. It does not for this reason, that if a man marries a girl he is expected to have some commonsense.

Q. Do you think that a young man will be guided by prudential motives ?

A. I hope he would be. The couple are supposed to be attached to each other as long as they live. I would therefore allow a certain amount of credit to the husband.

Q. As a Public Prosecutor have you known of any cases of husbands being prosecuted ?

A. Yes ; but not in my professional capacity. I remember one of the cases. So far as I remember it was a girl of about 10 or 11 and the husband had co-habitation with the girl and she ultimately died.

Q. What was the caste of the girl ?

A. Lower caste of Hindus.

Q. Do you remember any other case ?

A. It was like the previous case, but it did not end in the death of the girl. It endangered her life for some time. She was in the hospital for a pretty long time.

Q. How many years ago did it happen ?

A. Before the amendment of 1925. In both cases the girl was below 12, i.e., within the marital relations.

Q. In extra-marital cases that you might have come across, do the accused plead the consent of the girls ?

A. Consent is very seldom pleaded. They deny the fact.

Dr. Beadon : We are told that if the law of the age of marriage is passed, it will help those who are for marrying their girls late, but who are now afraid of public opinion. Do you think so ?

A. I think it will be applicable to Calcutta and places near about Calcutta. Outside the Metropolis and the suburban areas that question does not arise.

Q. Have you not ever had some of your friends talking to you that they would like to marry their girls late, but they are afraid that there would be social opinion and persecution ?

A. So far as my district is concerned, there is no such fear, and one can do things openly. For instance widow marriages are taking place openly.

Q. Are there many cases of widow marriage ?

A. Quite a number. Social reform in this direction is spreading more and more.

Q. Do you think there would be a great risk of immorality amongst girls if they are kept unmarried till 16 ?

A. I do not think so.

Q. Amongst Muhammadans ?

A. No ; there is no risk amongst Muhammadans. They are very well looked after at home. Also the purdah system is prevalent amongst the Hindus and Muhammadans in the mufassal. Therefore so far as the mufassal is concerned, there is no such danger.

Q. Do you think that the onset of menstruation creates the sexual urge in a girl ?

A. No.

Q. Did the cases you have given us of injury on account of early maternity happen long ago ?

A. They happened 7 or 8 years ago.

Q. Do you know of similar cases within the last 4 or 5 years ?

A. No. Both the cases were more or less exceptions. One of the cases happened in a family where the husband was more or less an adopted member of the family.

Q. Take a girl who has been strong. She has her first delivery at 13. Another girl is 25 when she has her first delivery. The girl at 13 has delivery with great difficulty. Can you say that it is due to early pregnancy ?

A. I see quite a number of such cases.

Q. Can you give us one or two cases ?

A. I know a Christian girl who was reading in a school where men and women mix freely. She was 13. She happened to mix with a Hindu gentleman, and they were subsequently married. After marriage I saw the girl, and I found that she was very much deteriorated in health.

Q. Was she well-nourished ?

A. She belonged to a well-to-do family.

Q. When did that happen ?

A. About two years back.

Q. What about the child ?

A. The child is rickety.

Q. Do you remember any other cases like that ?

A. I remember a case where a girl was married at 14. She was in the family way towards the later part of the 14th year and she then gave birth to a child. The child was dead. She could not be properly looked after by a midwife. She was removed to a Mission some time after. She is now permanently incapacitated to bring forth children.

Q. What do you think about the infants of these young mothers ? Are they healthy or weak ?

A. Generally they are not very healthy. I have noticed that women bearing children after 16 get stronger children.

Mr. Mitra : Is it not a fact that there is nothing in the Muhammadan scriptures either for or against the age of marriage ?

A. Nothing so far as I know.

Q. Do you think that if there is any legislation fixing the age of marriage there would be any opposition from the Muhammadan community ?

A. They will not be affected at all, but the general Hindu community will be affected, and they will object.

Q. Are you speaking of the districts of Bengal ?

A. Eastern Bengal is more advanced in this respect than Western Bengal. I think orthodoxy is more rampant in and round about Calcutta than in Eastern Bengal.

Q. Do you not think that there is no other way of eradicating this evil except by passing the marriage law, and that cannot be done by the age of consent law alone ?

A. The consent law would be ineffective. Therefore you should have a marriage law.

Q. Do you not think that if the severity of the present punishment is minimised, and fine only imposed in the case of marital offences more cases would come to light ?

A. I have already suggested that it should be fine only. I would also suggest that marital cases should be compoundable with the sanction of the court. The absence of these safeguards deters many people from going to the courts.

Q. If there by a marriage do you think that the punishment should be fine only for breaches of the law ?

A. I will not have imprisonment.

Q. Do you not think that fine only would be regarded as additional marriage expenditure ?

A. No I would like to have fine only rather than imprisonment. I think people will be more afraid of fines than imprisonment.

Q. What age would you fix in extra-marital cases ?

A. To start with you can have 16, and go to 18 later.

Dr. Beadon : You were telling us about a girl who was pregnant at 14 immediately after marriage, and that she was incapacitated for bringing in children. Was that a Hindu girl ?

A. Yes.

Written Statement, of Mr. N. C. ROY, Secretary, Indian Association Calcutta, dated the 24th November 1928.

1. There is dissatisfaction in the country amongst the educated people regarding the existing law relating to the Age of Consent.

2. The circumstances in favour of making an advance are :—

(a) The dissatisfaction as stated above.

(b) Medical opinion is strongly in favour of the view that a girl is not fit to be a mother before the age of seventeen.

(c) Children born of immature girl mothers are bound to be weaklings.

(d) Immature girls giving birth to children are liable to suffer injury to their health.

3. The amendment of the law made in 1925 does not seem to have any influence on these cases in Bengal.

4. In the opinion of the Association no law fixing the age of consent can be effective in protecting a married girl against co-habitation with husband within the prescribed limits unless marriage before the age of sixteen is penalised.

5. Girls attain puberty at about 14 years of age in this country. We have no information as to the variation in the age of puberty among different classes of the community.

6. Co-habitation generally takes place very soon after marriage whether the girl has attained puberty or the age of thirteen or not. Such cases seldom come to court.

7. It is against religious injunction in Hindu society to have consummation of marriage before puberty.

8. *Garbhadan* ceremony is not usually performed here, but there is a ceremony known as *Punarbibaha* which is performed immediately after the first menstrual period after marriage and it seems to have no relation with the consummation of marriage.

9. It has already been stated under answer 2 that medical opinion is strongly in favour of the view that a girl should not become a mother before she attains the age of seventeen. Attainment of puberty is not therefore a sufficient indication of physical maturity to justify consummation of marriage.

10. In the opinion of the Association girls below sixteen are not competent to give an intelligent consent to co-habitation with a due realization of consequences.

11. We have no information.

12. Yes. Girls who become mothers early are generally found to bear frequently also and their physical and intellectual degeneration as well as that of their progeny is vitally affecting the progress of the country.

13. Public opinion in this matter is confined to the educated classes.

14. Mothers do not seem to favour early consummation of marriage for their children, at least among the educated classes in Bengal.

15. We have no information on this point.

16. It is likely.

17. As the Association favours the raising of the marriageable age to sixteen, it is not necessary to separate marital and extra-marital offences.

18. This is covered by the previous answer.

19. If the marriageable age is raised as suggested above, this question will not arise.

20. No. We have already stated that the marriageable age should be fixed at sixteen.

21. Progress of social reform by means of education and social propaganda is essential.

Oral Evidence of Mr. N. C. ROY, Secretary, Indian Association, 62, Bow Bazar Street.

(Calcutta, 2nd January 1929.)

Chairman : Are you the Secretary of the Indian Association ?

A. Yes.

Q. Was this questionnaire placed before the Indian Association for its opinion ?

A. This was placed before the Executive Committee of the Association.

Q. Does the statement that you have given to us now represent the views of the Indian Association ?

A. Yes.

Q. Are you of opinion that the law penalizing marriages would be more effective than the law of the Age of Consent ?

A. Yes.

Q. In your answer to question 6 you have stated that co-habitation takes place soon after marriage whether the girl has attained puberty at the age of 13 or not. Do you mean to say that soon after marriage co-habitation takes place ?

A. Yes.

Q. What is the age of marriage then ?

A. Generally in the educated society now, the age is a little higher than before. In some places I have seen girls married at an early age and consummation taking place soon after their marriage.

Q. Do you know anything about the villages ?

A. I have some knowledge about villages.

Q. Does this happen in villages ?

A. It is our impression that it is so.

Q. Do the Badrlogs marry their girls at a late age ?

A. In bigger cities the girls are married at a late age.

Q. What is the cause for these girls being married late ?

A. It is due to education and social ideas.

Q. Supposing an Age of consent Act is to be enacted by itself without a law of marriage, can you suggest any methods for making the Age of Consent Act effective ?

A. We have't thought of it, but I say that I cannot suggest any methods to make it effective.

Q. What minimum age would you recommend for marriage if it is penalised ?

A. 16.

Q. Do you think that those people amongst whom early marriages take place here will not raise a great deal of opposition if the marriageable age is fixed at 16 ?

A. I don't think so. On the contrary there will be an acquiescence.

Q. Do you know whether there are post-puberty marriages amongst the Kulin Brahmins ?

A. There are many.

Q. What is the population of Kulin Brahmins ?

A. They are a small community in Bengal and I have no idea of what their population would be but it wouldn't be more than a lakh or two.

Q. Does early marriage take place in upper classes as a rule or does it take place more or less in all communities ?

A. Generally it takes place in all communities.

Q. With regard to question 11 you have said that you have no information, but don't you come across cases in which you see the actual condition of health of the girls ?

A. I have personally seen many cases in which the health has been considerably wrecked.

Q. Upto what age do the girls suffer ?

A. They suffer upto the age of 14 and 15.

Q. Is there any class here amongst whom post-puberty marriages take place ?

A. I belong to the Brahmo community. We have post-puberty marriages.

Q. Do you think that the population of the Brahmo community in Bengal now is 5,000 ?

A. Yes.

Q. Do you think that your girls are better off because they are married late ?

A. That is my opinion and I believe that is the opinion of every one who comes into contact with the Brahmos.

Q. Do you also think that the children born to these girls who are married late are better ?

A. Yes.

Q. Do you know anything about the Kulin children and the Kulin girls who are married late ?

A. I have no personal knowledge about this.

Q. Is the custom of marrying more than one wife prevailing amongst the Kulin Brahmins ?

A. It is dying out.

Mr. Kadri : Supposing Sarda's Bill is thrown out, still would you advocate the raising of the age of consent ?

A. Yes.

Q. Upto what age would you raise the age of consent ?

A. 16.

Q. Would you not be satisfied with 14 as a compromise just for the present ?

A. I would stick to 16.

Q. It is urged that we have had a modification of the law so late as 1925 and a sufficient time has not elapsed since then to warrant a further rise. So don't you think that a further rise will lead to some difficulties ?

A. I think the rise that was made in 1925 was quite insufficient.

Q. What is your opinion about the shastric injunctions on which these pandits rely in favour of pre-puberty marriages ?

A. I have seen the injunctions in both directions in the shastras and I don't think that religion would be affected in any way if post-puberty marriage takes place as a rule now.

Q. Don't you know they say that *kannyadhan* cannot take place after the girl attains the age of 8 ?

A. I don't agree to that.

Q. Have you any experience about the system of birth registration here ?

A. I have no knowledge of it.

Q. Are you in favour of registration of marriages ?

A. Yes.

Q. On whom would you impose the duty of maintaining this register ?

A. The same agency which is now maintaining the birth and death register can be entrusted with this work.

Mr. Bhargava : What is the number of members of your Indian Association ?

A. About 200.

Q. Do these members belong to different faiths ?

A. Yes.

Q. May I take it that the statement you have presented to us represents the views of all these members ?

A. This matter was placed in our committee which consists of 42 persons and this statement I can safely say represents the opinion of at least a majority of our members.

Q. May I take it that in Bengal at least more than 50 per cent. of the people are in favour of raising the age of marriage.

A. I have said that it is mostly the educated classes who are in favour of raising the age of marriage.

Q. At what percentage would you put the educated classes ?

A. It cannot be more than 5 or 6 per cent.

Q. So that excepting these 5 or 6 per cent. the remaining people are not in favour of raising the age of marriage. Is that not so ?

A. I have no doubt that if the law is enacted, they will accept it. On the economic grounds they will find it very easy to follow the law.

Q. Will there be any objection if it is raised to 16 ?

A. No.

Q. Do you generally come across boys in the colleges ?

A. Yes.

Q. How many students do you deal with ?

A. More than 300.

Q. Will you tell me what is the percentage of boys who are married ?

A. I think it is not very large now. The percentage may be 5 to 10 per cent.

Q. Do you think that generally young boys and girls do not like to marry while they study ?

A. Generally they don't like.

Q. Are most of the boys unmarried ?

A. Yes.

Q. What do you think should be the punishment if there is a breach of the consent law in marital relations ?

A. Imprisonment and fine.

Q. Is widow re-marriage prevalent amongst Bhadrals ?

A. It is increasing.

Q. Is there any trouble about dowry in Bengal ?

A. There is some trouble about dowry. As a matter of fact the fathers of educated boys expect a dowry at the time of the marriage of the boys.

Written Statement of the SOCIETY FOR THE PROTECTION OF CHILDREN IN INDIA.

(Calcutta, 15th August 1926.)

My Committee requests me to inform you that the above society in answer to the questionnaire of the Age of Consent Committee desire to say that they agree generally with the answers sent by the Bengal Presidency Council of Women except that in---

Question 21 they wish to express their opinion that in so far as marital relations are concerned public opinion should be educated ; but that as to extra-marital relations the age should be fixed not lower than 16 years.

Oral Evidence of Miss MARGARET G. ARBUTHNOT of the Society for the Protection of Children.

(Calcutta, 2nd January 1929.)

Chairman : How long have you been Secretary for the Society for the Protection of Children ?

A. For the last three years.

Q. What is exactly the function of the society ?

A. We try to prevent cruelty, neglect or moral danger to children. In the course of the last three years we had 1,270 cases some of which were cases of moral danger. Some of them were cases of cruelty, some of them were offences against children, some of them were juvenile offences, and some of them were cases of destitution and poverty.

Q. Are these cases sent to you by the Police, or do you yourself gather them ?

A. Both. Some of them are sent by their neighbours ; some apply themselves ; some come from the magistrates ; some from Inspectors of Schools ; some from Hospitals ; in fact they are sent by all sorts of people who may be interested in them, including the Police.

Q. What is the information you can give us with regard to girls, especially their suffering consequent on intra-marital or extra-marital connections ?

A. I have not had medical experience in this country. But I have lived 22 years in Egypt where the conditions are much similar to those in India. But I have come across 3 or 4 cases of abortions and suicide due to early marriage or improper connections.

Q. During how many years ?

A. During the last year and a half.

Q. Amongst what class of people was it ?

A. Amongst Anglo-Indians. I know of a case where a mother had three girls. She took them to one room and locked up a man also in the room. We brought an action against the woman under the Bengal Children Act. The woman then gave us the custody of the children.

Q. Have you got any girls in whose cases you have found that connection by the husband was in any way deleterious to the health of the girl ?

A. I cannot say. Such cases have not come to us. I have heard of many such cases, but I have no personal knowledge.

Q. Have you come across cases where there was injury to the girl?

A. No.

Q. Have you come across cases outside marriage?

A. I have come across cases of rape on girls 5 years old. In those cases the facts are undoubted.

Q. Is there any other useful information which you can give in regard to the question on hand?

A. A special committee of our society considered these questions, and we are of opinion that as far as marital relations are concerned, public opinion should be educated. As for extra-marital relations, the age should be fixed not earlier than 16. That is our considered opinion.

As regards question 3 we think that seduction is frequent in this part of the country.

Q. What are the conditions under which seductions take place?

A. Mostly they are amongst widows. Sometimes widows with babies have come to me. The forced celibacy of the young widows has a good deal to answer for these cases. In this connection I would like to know if this Age of Consent Act refers to Anglo-Indians also. If so I might tell you that there is a great deal of immorality amongst the Anglo-Indian population in Calcutta owing mainly to economic causes. I should think that overcrowding is also one of the causes.

Q. Do you think that it is due to a desire to lead a high life?

A. On the other hand I should think it is due to poverty some times. There is also a good deal of ingrained immorality, because I think they are products originally of illegitimate connections. I think that gives them a tendency to lead a life of immorality. There is also terrible overcrowding; there is want of education and the children are removed from school when they cannot earn a proper wage. They are never good citizens and they have no prospects in life.

Q. Do you know cases under questions 11 and 12?

A. I do not know. But I know cases under question 15. The difficulty is that in most cases the examination is not conducted by women doctors. I do not mean to say anything against men doctors, but I think that these cases should be examined by women. There is another difficulty, namely that these cases are not heard in camera, and therefore people hesitate to go to courts. I have seen a girl of 16 being cross-examined in the court. There was no one except a prostitute who gave evidence. The case was lost simply because there was lack of evidence. I know many refuse to go to courts because the ordeal of cross-examination in courts is more than an average girl can bear.

Also the difficulty in determining the age are enormous, because I have found that the use of the X-rays is valueless. The bones are ossified in some cases 6 months earlier, and in some cases 2 years earlier. That is the opinion of Dr. Golstoun. I have known cases where the age proved to be incorrect by over a year. In this connection I would suggest that the onus of the proof should be laid on the prosecution.

As regards question 17, our opinion is that marital and extra marital cases should be separate. In marital cases the question is whether there has been cruelty or not. But in the case of extra-marital offences you are ruining the girl and taking away from her what she cannot get back. Therefore the punishment ought to be deterrent. I think when fixing the age we should have the age of majority as the guide.

Q. In reply to question No. 18 you say that you would make a difference in the procedure of trial for offences within marital relations and outside.

A. In intra-marital cases a girl is more or less in danger of damage and cases are brought every year in which their life is in danger but in extra-marital offences

it means robbing the girl what she would never get again. It may ruin her life for ever.

Q. Therefore you want to have different kinds of trial.

A. I should think so but you cannot lay down any hard and fast law because it would amount to cruelty. I want severe punishment in extra-marital cases; it ought to be severer and deterrent because cases in which you can get conviction are not very many. There are many cases which are not worth taking to court because there is not much suffering and as there is insufficient evidence nothing will come out of them.

Mr. I. Kadri : You have said that there are cases of seduction of widows. May I know how many cases occur?

A. It is very difficult to say but I should think about half a dozen in the last month. People are very shy to give publicity to such cases. In one or two cases where there were respectable widows concerned I managed to get them into the Dufferin Hospital.

Q. May I know the ages of those widows?

A. It is very difficult to get at the truth. People generally conceal the real age. The girls' fathers say that they do not want to go to court on account of terrible publicity. Generally they are 15 to 17 or 18.

Q. Have you got anything like the Children Protection Act?

A. Yes. I am sorry I have not brought the Bengal Children Protection Act, but the important sections have not yet been enforced.

Q. If children are loitering in the street will you take charge of them?

A. Law does not allow that. The sections that are in force are for cruelty. One or two cases under that section are pending. One girl of 11 was turned out at 2 o'clock in the morning with marks of stripes. Her mother got imprisonment. The second case was of a little boy who had a deformed knee he could walk but he was not allowed to walk. He was made to twist his feet. I got the man six weeks imprisonment. Another case was of a baby whose arm was very badly burnt. The mother was lifting her arms for alms. These were the three cases under the section which is in force but the preventive sections are not in force yet. It is really very hard to see things going on like that.

Q. How is your society financed?

A. Government has given us a small grant of Rs. 2,500 a year and the Corporation gives us Rs. 2,000 a year but we have been able to raise the total to Rs. 6,000, a year.

Q. Is it a missionary society?

A. It is non-sectarian. We are sending children between 13 and 14 to homes in different parts of India. The other day we came across a girl whose father was giving her for prostitution. She was immediately put in a Hindu orphanage. There was another case in which one parent was giving the girl for prostitution and the other was resisting it. She came under our protection. If the orphanages cannot keep them they refer them to us.

Q. Have you got many orphanages?

A. We use existing ones according to the children's special means. Some children are of good birth and good position and others are poor. Some are Hindus and some Mohammedans and some are Christians. We have not got our own homes.

Mr. Bhargava : When such children come to you you find some suitable home for them?

A. Yes. What we are trying to do is to have our own home as a clearing house because it is very difficult to find homes at the spur of the moment. If we have a hospital we can keep them and then we can see what they are fitted for and deal with them more suitably.

Q. What is the usual age of marriage among Anglo-Indians?

A. I should say most girls are married at 17 or 18 but sometimes they are also married at 15.

Q. You say that this immorality is due to economic causes. May I know what is the usual age of girls who go wrong?

A. It is very often 16.

Q. Is it before marriage?

A. Very often before marriage. As the law stands now if a girl is over 16 and she chooses to go and live with prostitutes, we cannot prevent her. That seems to me to be the wrong. She is not old enough to know what it means. She goes there because she gets food, clothing and jewellery.

Q. What is the usual age of menstruation among Anglo-Indians?

A. "Between 12 and 13.

Q. What is that age at which you think that the difficulty in determining the age would be the least?

A. One test is wisdom teeth which come at 14. My suggestion in Egypt was that whenever a girl had no proof of her age wisdom teeth will be acceptable but sometimes you get wisdom teeth at 16 although as a rule they appear at 14. Even if you raise the age from 13 to 14 the matter will be a little easier than it is at present but it will always be very difficult to determine the age. Doctors can only do it with their own knowledge and experience and observation of a particular case and there are a great many other factors to be considered.

Q. As regards the extra-marital age, you would like to fix it at 18?

A. Yes.

Q. Would you like to fix the marriage age at 16?

A. We all feel that it would be better to leave the marriage age to public opinion because otherwise if you force an increase in the marriage age before the public opinion is ready for it you will make a lot of otherwise good men into criminals.

Q. But perhaps you are not aware that marriages take place at a very early age?

A. I know, that is a great pity but generally they are not consummated.

Q. You yourself say that cases which come to you are cases of widows. So if the marriage age is raised the cases of seduction of widows will be less?

A. People must be a little bit ready for it before you raise it too much. In extra-marital cases you can raise it to any limit and if you give deterrent punishment that would minimise the amount of crime.

Q. So far as extra-marital cases are concerned the country cannot have any objection?

A. In extra-marital cases it should be raised to anything possible. My committee suggested 16 but if it is made 18 there will be no objection.

Letter dated the 3rd January 1929, from Miss MARGARET G. ARBUTHNOT.

As requested by you, I forward a copy of the Bengal Children Act of 1922.

Section 27 (except IIc): section 28, ii and iii, also sections 29 and 30, are at present *inoperative*.

This Society is pressing for their operation, and more especially for Section 27, 11.

I also enclose a copy of the Calcutta Suppression of Immoral Traffic Act of 1923: and this society's report for 1927 which I hope may interest you.

A combination of this Act, and of section 27, 11 (c) is usually used in cases in the Children's Court, of girls received from brothels.

Written Statement, dated the 22nd December 1928, of Dr. T. N. MAJUMDAR, D.P.H., etc., Health Officer, Calcutta.

1. Not that I know of.
2. Advance on the present law is desirable in the interest of both the mother and the child as before the age of 15 or 16 the constitution is not fully mature to bear the strain of child-birth. This advance in age is expected to reduce the number of ill-developed children as well as the maternal mortality.
3. These crimes are not so frequent in the town of Calcutta and are less frequent in West Bengal than in East Bengal.
4. It is too early to pronounce a definite opinion as to whether the change in the law has led to the postponing of the marriage of girls beyond 13 years, but in Bengal as a rule girls are seldom married now before the age of 13. In my opinion the change is due more to social and economic causes than to any change in the law. In that view it is not necessary for me to answer the last portion of the question.
5. The usual age is 12 years. Yes it does to a certain extent but the difference is mainly due to difference in physical development consequent on the mode of life and nourishment.
6. (1) No.
(2) Yes.
(3) Very rarely.
7. So far as my knowledge of Bengal goes little importance is given to such religious injunction now-a-days. So far as I know such injunction exists but this does not seem to me to be of absolute prohibition.
8. No.
9. Not always. 2 to 3 years after puberty.
10. It is difficult to give a general answer applicable to all cases but as a rule she would not be in a position to give valid consent before she completes the age of 13.
11. Yes. I know of several cases where general deterioration of health has resulted from early cohabitation. It is difficult to give details but it is my inference from experience in the Medical Profession extending over 28 years.
12. Early consummation of marriage is certainly responsible for high maternal and infantile mortality. It also retards the physical progress of the people. It is difficult to pronounce an opinion on intellectual deterioration.
13. Not in a position to answer this question except what I have stated in my answer to question 4.
14. Women in educated families generally do not favour. The condition may be otherwise amongst the illiterate or less advanced societies.
15. Difficulty there will always be for the stage of physical development is not the same in all girls of the same age but the margin of error is not very great. I can suggest no measure which will remove the difficulty.
16. I do not think so.
17. Yes, I think differential treatment ought to be meted out to extra-marital sexual offences.
18. In my opinion intra-marital sexual offences should be tried with the help of women jurors preferably elected from women of his own class.
19. In my opinion some safeguards are necessary in the case of marital offences although I cannot suggest any definite measure.
20. Legislation fixing the minimum age of marriage would be more effective and more consonant with public opinion.

21. Penal legislation is necessary in the present state of society and will be an important factor in the education of the people and in changing public opinion on this matter.

Oral Evidence of Dr. T. N. MAJUMDAR, D.P.H., Health Officer, Calcutta.

(Calcutta, 2nd January 1929).

Chairman : Have you got any statistics ?

A. I have brought statistics of 1,500 cases (attached as an appendix) but I have not been able to bring statistics of all the cases. These are statistics from 2 units. We have got 7 units and in each unit there are 2 midwives and a lady doctor in charge. We have altogether got 22 midwives who conduct deliveries in Calcutta in every house. There are about 5,000 deliveries every year conducted by these Corporation midwives. I wanted to give statistics of all these 5,000 cases in all the units but they are not yet ready. We have in addition 2 maternity homes and about 1,000 deliveries take place in one of the biggest maternity home. Units generally deal with normal labour cases and if there are abnormal cases we send them to the maternity homes. Unless the statistics of maternity homes are given in which difficult labours take place statistics are not complete. On account of holidays I could not get all the statistics. The results are different in different units. It depends on the classes of population that they have to deal with.

(Witness promised to collect and send all the figures for 3 years with the conclusions that he would draw from these statistics. He was also asked to send the figures of death rate of girls between 10 and 15 and 15 and 20).

Q. As regards your answers to the questionnaire have you anything else to suggest ?

A. I would suggest that all marital cases should be tried by women as it is at present in America and if possible by the women of the class to which the girl belongs. Another point is that we want that consummation of marriage may be postponed till 15 but at the same time there should be some check or some safeguard against false complaints. So that the law may not be misused. Just as it is in the case of English Law marital cases should be treated as misdemeanour and lighter punishment should be given. In order to educate the public opinion some punishment must be given in marital cases. In extra-marital cases it is against the moral decency of the society and stronger punishment is necessary.

Mr. Bhargava : What safeguard would you suggest ? Would you like that every Court must enquire into the circumstances of the offence before it is pleased to call the accused person ?

A. I cannot suggest anything definitely but I want that there should be some check against false complaints by neighbours or anybody else.

Q. You say that so far as marital cases are concerned the punishment should be fine.

A. Yes, I suggested fine.

Q. Do you not think that fine may not act as a sufficient deterrent. There may be a provision for imprisonment but it may be left to the discretion of the magistrate.

A. As a rule I would suggest light punishment. We want to educate public opinion. The marriage age is already going on higher and higher and particularly among the Bhaderlok class it is 15 or 16.

Q. Would you like the consent law or the marriage law ?

A. I would like the marriage law better ; the age should be 14 or 15.

Q. Do you think this suggestion of yours *re* trial by jury is feasible ?

A. I do not say it is feasible but it was a suggestion.

Q. There are many more offences which are much more serious and which entail more serious consequences to the accused and the injured party. Those should also be tried by jury. Is it not?

A. That is one of my suggestions. I would only like to have sufficient safeguards.

Q. You think that early consummation by itself is a very great evil?

A. I was under the impression that in the case of deliveries at the age of 14 or 15 there would be larger number of deaths but I find from the statistics that many girls delivered at 14 and they had easy deliveries.

Q. There may be injury to the system which may not be visible at the time.

A. I think they are not fit for consummation just after the attainment of puberty; it should be at least 2 years after puberty. Menstruation is only the beginning of development. Here the average for menstruation is 11.9 years.

Q. Do you think that this early menstruation at 11.9 years is the result of early marriage since many generations?

A. It is difficult to say anything on the point.

Q. If you want to raise this age of menstruation then you must raise the marriageable age to a higher limit.

A. It should be two or three years after puberty. I would suggest 14 for marriage and 15 as the least age for consummation.

Q. Do you think that 16 is a safe age for motherhood?

A. Yes though of course one would like to go higher.

Q. Do you think that people will generally like an increase in age?

A. Amongst the literate people there would be no objection but the illiterate people may have some objection. The orthodox people will have objection.

Q. But do you think that after sometime the objection will die down and they will accept it?

A. Yes. Therefore it is better to go step by step.

Q. Don't you think that this constant pricking is bad and it would make matters worse. If we raise the age once to a higher limit there might be a good deal of opposition but otherwise there will be opposition every time it is raised.

A. As regards the marriage it is going up among the Bhaderlok class but there are many people who would not like this age to be raised at once.

Q. I would like to know why do you like this idea of going on gradually so far as consent law is concerned. Consent law is based on the consideration of health.

A. From the medical point of view it is all right but the difficulty is that people here are averse to changing their religious customs. Even if with very good intentions something is done they take it amiss.

Q. If medical opinion is conclusive on the point that below a particular age consummation is productive of great harm, don't you think all other considerations should not be taken notice of?

A. Another difficulty is that if you interfere with religious customs there will be great opposition.

Q. But religious custom has already been interfered with and religious bogey is no bogey at all?

A. If great interference is not made people will not object.

Q. When you fix the marriage age at 14 it will be an interference with religion and if that is so what is your objection to raising the age of consent to 15 or 16?

A. I do not object to raising the age to 15; I want to fix it at 15.

Q. As regards extra-marital cases you want to raise it to 18?

A. Yes.

Oral Evidence of Sir P. C. RAY, University College of Science and Technology, Calcutta.

(Calcutta, 2nd January 1929).

Chairman : What are the difficulties about raising the age in the depressed classes ?

A. In Bengal as far as high castes are concerned—Brahmans and Kaisaths—there is no difficulty. The marriage age is automatically increasing due partly to education and more to economic causes. Among the higher castes the number of girls is rather a little more than the number of men ; that is in the census report. In fact it is difficult to get bridegrooms and so the age is rising. But the difficulty is with the so-called untouchables or depressed classes. I am supposed to be in touch with the depressed classes so I translated an article from the organ of the Poundria Kshatrias enclosed as appendix. Shudras and Podaus claim to be amongst Kshatrias. They are the chief agriculturists along with the Mussalman population of Bengal. Among them the number of girls is much less than the number of men so there is a great difficulty in getting brides. They are generally poor and up till 40 to 45 they remain unmarried but according to Hindu custom they must marry. They mortgage their property or they may die but they have to find dowry to the extent of Rs. 300 or more for the bride and they buy a girl generally of 9 years. A few years after the husband dies leaving behind a young widow. She becomes the common property of the entire village caste. She becomes a kept mistress and so all sorts of crimes go on. If you look to the census report you will find that the Dhobis, barbers, potters and gowalas suffer from the same evil and these cases are almost becoming extinct. I read a pamphlet reproduced from the Bengali and I also read a series of articles in that journal. They were reprinted and scattered broadcast. One of the reasons is that there are less girls. If you want to have any kind of legislation of a drastic nature I am afraid it will be felt in this class.

Q. What do you call legislation of a drastic nature ?

A. If there is legislation that girls are not allowed to marry before puberty that will cause great difficulties in this class. Unless the caste system and the social evils attendant upon it are removed it would be very difficult to introduce legislation for those people.

Q. Don't you think when there is a law the difficulty will be common to everybody that is to say a girl up to 14 will remain unmarried and after that there will be chances for anybody to marry her.

A. I am for marriage law but I am bringing forward difficulties in certain classes of Bengal which may not have been brought to your notice. The other day I attended a conference of the Vaisha Shahs. They had a very big conference to which I was invited. The attendance was 5,000 and some of the leaders came forward and pointed out that there were many social evils but the difficulty is that intermarriage between the depressed classes is not allowed. Even among the Kaisaths who claim to be very advanced there are four sub-divisions. They cannot inter-marry or inter-dine on social occasions. These artificial difficulties are a good deal of our own creation. If all these could be obliterated there would not be any great difficulty in having a legislation.

Q. What is your opinion about dissatisfaction being caused ? Will it be by raising the age of consent or fixing a marriage age ?

A. I do not believe in that. When *Sati* was abolished by Lord William Bentinck there was the orthodox community and there was the liberal community but nothing came out of it and that was more or less a century ago. If there was something like legislative enactment I think it will help the cause. Some of the Hindu States have got drastic laws.

Q. Supposing there was a law of marriage, would you prefer that to the age of consent law ?

A. It is very difficult to say. 50 or 60 years ago it was a kind of betrothal marriage. The girl lived with the father all along. But the custom now in Cal-

cutta is different. As soon as the girl is married the mother-in-law brings her up as her own daughter and they are brought together at an immature age. If that is allowed the age of puberty is artificially stimulated and sexual instinct is also stimulated. We are progressing in educational matters but in social customs there is a retrograde step.

Q. Would you rather on that account have a law of marriage fixing the age of marriage?

A. Yes, I would rather have the marriage age fixed.

Q. What would you put it at?

A. I attended the doctors conference. Dr. Deshmukh presided and there were about 300 to 400 doctors present and there was discussion. One or two doctors said that age of puberty should be the test for consummation but almost all the other doctors were of the other opinion. Dr. Deshmukh said that simply because you have learnt to write do you think you will be able to write anything. Simply because puberty has been attained, do you think a girl is fit for consummation. That is not the case. Puberty does not show that a girl is fit for maternity. That conference decided the age of consummation at 16.

Q. You know the ages now suggested in the Bills are 14 for girls and 18 for boys and also there is a Bill for the age of consent to be raised from 13 to 14 in marital cases and from 14 to 16 in extra-marital cases. Do you approve of that?

A. In 1870 when Keshab Chander Sen the Brahmo leader wanted a marriage act he took the opinion of the then Principal of the Medical College the late Dr. K. L. Sarkar and as far as I remember 14 was assigned as the minimum. But it is rather too low. Of course some maintain that in tropical climate the age ought to be early but I would not make it less than 15.

Q. You would make that both as the age of marriage and as age of consent?

A. I think once you allow marriage to take place it is difficult to prevent consummation.

Q. Do you think there are consummation of marriages in Bengal before a girl is 13?

A. It is possible that cases take place but they are hushed up.

Q. We were told that the age of the girl is no concern. As soon as she attains puberty consummation takes place whatever the age of the girl may be.

A. In Bengal there is a ceremony *punar vivah*. As soon as this ceremony is performed the girl is allowed to cohabit with the husband.

Q. But does that follow soon after puberty?

A. Yes.

Q. Does public opinion tolerate it?

A. Public opinion tolerates many a dirty things in society. I wish public opinion were a bit stronger.

Mr. Kadri: Are there many unequal marriages, for instance, an old man of 50 or 45 marrying a girl of 10 or 12?

A. In the Hindu society one may have grand-children and he may be 60 or more he sometimes marries a girl whose maximum age may be 12 or 14.

Q. Are there many such cases?

A. It is not rare. I will say it is not very uncommon.

Q. Are the social reform associations doing anything to discourage this practice?

A. They are. When any such case occurs the news is printed in the papers and names are mentioned and the man is held up to public ridicule and obloquy. The practice is fast disappearing.

Q. You seem to think that merely raising the age of consent without having the minimum age of marriage would not be very effective?

A. I am afraid, not.

Q. Suppose it is not possible to pass the marriage law because of the opposition of the orthodox people would you still have any objection to raising the age of consent?

A. In that case I would rather raise the age of consent. But it is, as I have said, very difficult to find out the breach of the law. The law practically will be a dead letter. I have scarcely heard of a single case.

Q. But still the existence of the law on the statute book would be an educative factor. Is it not ?

A. Certainly.

Mr. Bhargava : What is the age after which you would like to interdict marriage in the case of men ?

A. If a man marries a widow I have no objection to any age.

Q. Supposing a man of 40 or 45 marries a virgin of 20 even then will you have no objection ?

A. I will have no objection.

Q. So that if the age of consent is raised to 16 or 18 this evil of which you have spoken will practically disappear.

A. Yes, it will.

Q. So that if there is no marriage law there may be consent law and the age may be fixed sufficiently high ?

A. Yes. I am not a medical man but I think the man has the power of producing children up till 60.

Q. You say even now there are some reform associations which are working and when an old man marries a very young girl he is held up to ridicule. If there is the age of consent law and the age is fixed sufficiently high will there be many more persons forthcoming and will the offenders be brought to book ?

A. Yes.

Q. So that for all these evils the age of consent will be a panacea ?

A. I would rather prefer to have the age of marriage fixed at 15.

Q. As regards extra-marital cases what would you like the age to be raised to ?

A. 18.

Q. In marital cases the father exercises the discretion which is needed, but in extra-marital relations you want to protect the girls going to schools and colleges and factories. Is that so ?

A. Yes.

Q. Would you like that all these cases should come to light ?

A. Yes.

Q. What provision would you make for that ? Would you place the obligation on the social reform associations to report these cases ?

A. Public opinion is so strong and healthy that such cases are reported in the newspapers. Some correspondent in a village or city gives the news.

Q. You would like that the present provision that every person may be able to bring cases to light may remain ?

A. Yes. Public opinion is *the* thing. Creation of healthy public opinion is necessary.

Q. Would you place an obligation of necessarily reporting these matters on the Lambardars or the Presidents of the Union Boards ?

A. I have noticed youngmen who have got ideas about reform often report such cases. The lambardars or the presidents of the union boards are very often under an obligation to the man and as a rule they are not very reliable. Those who have got some sort of education are on the look out for some appointment and it is only the residuum who will report in the case of villages.

Q. Would you like to keep the power of the police and the Court intact as it is ?

A. Yes. Whenever an old man of 60 marries a young girl I have seen youngmen of the locality bending themselves and placing obstacles in the way.

Q. You will realise that the main evil is not of old men marrying young girls but often young boys are married to very young girls, and as you have yourself pointed out, sexual intercourse is to be found in a larger quantity when compared with the olden times and that some restrictions were imposed by the parents and restraints exercised which is not done now. What would you suggest to remedy this ?

A. As I said, the only thing is to raise the age of marriage.

Q. So is this your absolute remedy?

A. You know in Bengal as soon as a girl is married she at once becomes a family member in the house of her husband, whereas formerly it was not so.

Q. Since how long you have been noticing this tendency?

A. I have been watching this for the last half a century.

Q. I understand therefore that comparatively the age of maternity has also gone down?

A. Yes.

Q. In spite of the fact that marriages take place late?

A. Yes.

Q. Have you seen any case in which a girl became a mother early at 13 or 14 and the girl or her children suffered?

A. It is common knowledge. It is not so rare that I should single out one or two cases. I have noticed it almost in horror and shame that girls should become mothers at such a young age.

Q. You say in the villages if a girl becomes a widow, among the lower classes, she becomes the common property of young men. Is widow marriage allowed among these people?

A. It used to be allowed. Now they are trying to become the 'twice born.' Some of them call themselves 'Vaish Shah.'

Q. That was a tendency 10 years ago and now the tendency is reversed. Now, the higher classes want to marry their widows and the lower classes don't.

A. No. In Bengal there are so many marriageable daughters who cannot get any bridegroom. It is a question of numerical strength and an economic question also. Strange as it may appear, it is among the lower classes that you find re-marriage. It is because of necessity.

Q. Is caste system very little in Bengal, or going down?

A. It is being relapsed.

Q. Have any inter-marriages taken place between community 'A' and community 'B' which did not take place before within the last 3 or 4 years?

A. There are no inter-caste marriages. Some marriages are taking place among different sub-castes. Inter-caste marriages are rather rare. It is only the England returned and those who command good income that have inter-caste marriages.

Q. Is their number negligible?

A. Yes.

Letter dated the 31st December 1928, from Sir P. C. ROY.

It will help the Committee much, if you place before them the enclosed translation from the organ of the Poundria Kshatrias, who belong to what are called the *untouchable* class. The statement applies equally to several other "low" castes in Bengal. On account of the difficulty in procuring suitable brides they are dwindling down in number. In some villages they have become almost extinct. This is notably the case with the Dhobis, Barbers, Potters, Blacksmiths, etc. Their Census Report also bears this out.

When there is such a death of females among certain "lower" castes, it is not easy to prevent child marriages, even by the adoption of stringent legal measures.

It is however, a remarkable fact that among the high castes in Bengal the proportion of the male to the female is nearly the same; in fact the birth of females rather predominates over that of the males.

Written Statements of persons not orally examined.

Statement published in Pans number of 1335 B. S. of "Pondriya Khatria Samachar" by PROMOTHA NATH SARKAR of Rajshahi.

[Translated from the Bengali.]

In our society there are altogether 40 marriageable brides for 100 marriageable grooms. Besides this, there are many widowers of marriageable age. It is surprising to note that there are 60 per cent. males and 40 per cent. females out of total birth. From this, it is needless to say that a large number of men will have to remain life-long bachelors for want of brides. In the meantime I have met with some men of 10 to 60 years of age who could not marry for want of wives. There are innumerable widowers who have no chance of re-marriage and no prospect of their continuity of the line; on the other hand, for want of girls, a man of advanced age has to marry minor girls. The result is that before she attains the age of puberty, he passes away from this world to the land of the unknown after satisfying all his worldly cravings. For this reason, the number of minor widow girls are increasing and gradually the families are being extinct and a large number of males being unable to marry live with unchaste widows of this society or other societies thus staining the good name of their forefathers. Thus they spend their life comfortably adding to the number of bastards while others are living the life of so-called mendicants adopting to the "vek" system of Vaishnavas.

This is why the population is being thinned, but the society does not take any notice of this. About 50 years ago there was not a single village in which at least 100 families of the same caste did not live there. Now it is very doubtful whether there exist 60 families. Almost all the families are practically ruined. We are still in the dark as to what steps the right thinking men of the society are going to take. The leaders of the conservatives following the fetish of traditions remain idle leaving the people to their fate. They are not amenable to reason. To solve this problem, on last Asar, 1334, I got two widows married—the effect of which is that I have been excommunicated socially by the whole community. It will not be out of place to mention here that before the marriage took place we informed our society about this. In reply to that the general public of the three villages consented to this and others did not respond to us, but a very few educated men of liberal ideas consented to the proposal.

It is a matter of regret that two of the three villages just mentioned have sided with us and the other has left us and joined the other party and a big village of the other camp remains neutral. Owing to this dissension we could not marry any other widow within this one year and a half. But it is pleasing to note at present that many are changing their opinion and they are showing sympathy to our movement.

We cannot make out the motives of their conservatism. I am acquainted with many of them who advise others to keep concubines, but their religious sentiments seem to be hurt whenever any widow re-marriage is proposed. They on the other hand would fain marry for the fourth time, but sermonise on others. They would preserve all outward shows, such as keeping a tuft of hair and anointing their foreheads with sandal and vermilion and they would feast to their heart's content on fish and meat, whereas they would prescribe austere penance to widows of tender age. They themselves live with youthful wives, but they do not think of the miseries of the widowed daughters and sisters. Though corruption is prevalent in every house and cases of wilful and unnatural abortions are numerous,

yet people are regarded to be out-castes if they take food in the hands of chaste widows when remarried. Society is on the ruin owing to such sinful acts of debauchery and corruption, but no attempt is being made for this remedy. They are ready to give away the forcibly outraged girls to others, but the society will turn its back towards them.

Nothing more lamentable is conceivable. Not even the little finger is raised in case of equally guilty males, whereas the females have to atone for their sins—is there anything more tyrannical and unjust than this!

* * * *

It is the ideal society where the names of Kunti, Abalya, Tara, Draupadi, Mandolori and others have become the household words!

What a cruel treatment is meted out where the names of so and so..... have become the household words.

**Written Statement, dated the 13th October 1928, of Mr. G. D. BIRLA,
M.L.A., 8, Royal Exchange Place, Calcutta.**

1. I am decidedly in favour of an advance on the present law, as I do consider that early consummation and early maternity are very largely responsible for high maternal and infantile mortality and that true consent, which implies both physical maturity and due realization of consequences, cannot be given before the age of 16. I should have favoured a higher age both within and outside the marital state than that proposed in Dr. Gour's Bill, but I know there are difficulties in the way and I would, for the present, be satisfied if the law is so amended as to give us 14 and 16 respectively in this matter.

2. I cannot conceive of any valid arguments that can be urged against raising the age of consent. Even those who assert that early marriage is rendered obligatory by religious injunction, do not go so far as to countenance early consummation. In any case, no susceptibility ought to be hurt by an amendment which by fixing the age at 14 within marital state only aims at achieving in an effective manner the purpose of society in providing for the *Gaona* or the *Garbhudan* ceremony. Outside marital state, of course, there cannot be two opinions as to the necessity of raising the age for the necessary protection of girls.

3. I am not in a position to deal with the entire questionnaire from knowledge of existing conditions. But my replies to some of the questions would be as follows:—

10. Yes.

12. I would suggest provision for proper registration of births.

16. Yes. In fact, that is one reason why I am inclined to favour a still higher age than the one in the Bill.

20. Penal Legislation fixing a higher age of consent for marital cases is never likely to be more effective than legislation fixing the minimum age of marriage, but we have at present to confine our attention to the Bill before us and welcome it on the principle that some advance is better than no advance at all.

21. We must have both to supplement each other.

**Written Statement, dated the 15th August 1928, of Rai BADRIDAS
GOENKA BAHADUR, C.I.E., M.L.C., Calcutta.**

1. There is dissatisfaction in the orthodox Hindu community with the state of the law chiefly for two reasons. Firstly, the law being applicable to cases with-

in the marital state also, it means an interference with a socio-religious custom about consummation of marriage and secondly, because it may be taken advantage of by the enemies of a family to put it to trouble and humiliation. But in so far as it relates to intercourse outside marital relations, there is no dissatisfaction.

2. For reasons stated above, I would like to see the provisions of the law altogether repealed in regard to married couples. It will remain a dead letter, as it has remained so long. I do not think it wise to retain such a law which only gives cause for dissatisfaction without serving any useful purpose.

For cases outside marital relations, I would suggest an increase of the age-limit to put an effective check upon crimes of the nature of seduction and abduction of girls. 14 or 15 years cannot be said to be the proper age when a girl should be allowed full discretion to choose her own path of life. At this tender age a girl may be prevailed upon by her seducer or abductor in his own interests to say and do things of which at a maturer age she is likely to repent. The age of consent for such girls should be raised to at least 18 years outside the marital state.

3. Yes, in Bengal crimes of seduction, abduction and rape have become very frequent of late. During the past few years there has been an alarming increase in such crimes which shows that the amendment of the Act made in 1925 raising the age of consent to 14 years for unmarried girls has not succeeded in reducing, much less in preventing, such crimes. Communal tension is responsible to a large extent for such increase, but if the perpetrators of the crimes are dealt with as severely as they deserve, it cannot but have a deterrent effect. In my opinion cases that come within the purview of sections 375 and 376 of the Indian Penal Code should, as a rule, be taken up and fought to the end by the Police as Crown cases to put down such social anarchy with a strong arm.

4. I do not know what effect, if any, the amendment of 1925 had upon the lower classes of people, but so far as I know, it had no effect and possibly could not have any effect upon the higher classes for the simple reason that consummation of marriage takes place very seldom, if ever, before the wife is 13 years of age. There was, therefore, no question of postponing consummation of marriage. Nor did public opinion require any stimulus in that direction. Among certain sections of the Hindu community girls are now often married at an advanced age, but such late marriages are all due to economic causes and not to the law. What therefore is necessary in my opinion is not the adoption of any steps to make the law effective but to make it wholly inapplicable within marital relations.

5. Indian girls generally attain puberty between the ages of 12 and 13 years. I do not know if the case is different in different castes or communities.

6. (1) I do not know any class or community which allows cohabitation before puberty.

(2) and (3) Cohabitation takes place soon after puberty if the girl happens to be already married. According to the Hindu social custom, the married couple has to go through another religious ceremony before they meet and live together as husband and wife. But it is very seldom that it takes place before the girl completes 13 years. I do not know of any such case having come to Court.

7. The practice of consummation of marriage at puberty owes its origin and existence to religious injunction. According to the Shastras, such as the *Parasara Samhita*, the *Jajnavalka Samhita*, etc., it is a religious duty and its breach is sinful.

8. *Gauna* and *Garbhadan* are two different ceremonies. *Gauna* means the first visit of the wife to her husband's house after marriage and it may take place both before and after puberty, though it generally takes place after puberty. *Garbhadan* means cohabitation for the first time after the wife attains puberty. It is not the custom in all parts of the country to perform both these ceremonies; while in some parts both the ceremonies are performed, in

others only one of the two, either the "Gaona" or the "Garbhadan" is performed.

9. It is difficult for a lay man to give any definite answer to this question. So far as my information goes, the attainment of puberty is not recognised by the medical science of either the East or the West as a sufficient indication of the girl's physical maturity for consummation of marriage or child-bearing. But if it is remembered that in India early marriage and the consummation of marriage soon after puberty have been the custom from time immemorial and yet the off-springs of such marriages formerly were men and women of very sound health who lived long and attracted the admiration of the world by their success in every sphere of life, I feel diffident to express any opinion one way or the other. Evidently the gradual physical degeneration of the Indian people has given rise to this question. In view of what I have stated above, I think there should be a thorough enquiry to ascertain how far this degeneration is attributable to the Indian system of marriage and how far to economic causes.

10. This question cannot be answered definitely. On the one hand we find that Indian ladies who have received education in schools and colleges are opposed to early marriage and early consummation of marriage and strongly support the raising of the age of consent. I think their opposition is based on a due realisation of the consequences of early consummation and early maternity on the health of women and on the health of their progeny. On the other hand, Indian ladies who have not received such education and who live and move and have their being in the orthodox Hindu society feel very sad and depressed if their girls remain childless after their sixteenth or seventeenth year. The fear of barrenness brings on sadness and despair and they go so far as to perform various kinds of religious ceremonies to invoke divine aid to bless the girls with children. It is difficult to believe that they do not realise the consequences of motherhood at that age on their health and on that of the children. The question of the proper age for girls to give an intelligent consent is a question of their education, environment and mentality.

11. I have never come across cases of cohabitation before puberty nor have I any experience of cases of cohabitation after puberty resulting in physical injury to the girl. I have, however, seen cases of both young girls and grown up women giving birth to children of weak health.

12. Yes, I believe that too early maternity cannot but be responsible, at least to some extent, for high infantile mortality and that the physical and intellectual development of children born of too young mothers, even if they live, cannot but be below the average standard. But the question is, what is the age at which girls can be undoubtedly considered to be fit for child bearing and is it a question of age alone or there are other factors also?

13. So far as I know, the amendment of 1925 has not led to any development of opinion in the orthodox Hindu society in favour of a further raising of the age of consent in marital cases, but the Hindu society has always been and still is in favour of raising the age limit outside the marital state.

14. Yes, orthodox Hindu women favour consummation of marriage for their children after puberty.

15. I have no personal experience of the trial of cases under sections 375 and 376 of the Indian Penal Code but having regard to the fact that the age of the girl is an important factor in such cases, I think difficulties cannot but arise in determining the age of the girls as a result of the efforts of the parties concerned to establish their own cases. Horoscopes and even medical opinion may be questioned. The introduction of a system of registering births and of issuing birth certificates free of charge is, in my opinion, the best way of removing such difficulties. In the interior of the country, the Village Panchayets or Union Boards may be authorised to register births and deaths and to grant certificates, but I am not sure that it will cause no inconvenience to the people.

16. Yes, the difficulty in determining the age is likely to be reduced to some extent if the age limit is raised to above 14 years.

17. I would not separate extra-marital and marital cases into different offences, but would remove the latter from the category of offences altogether.

18. Holding the view stated in answer to question 17, it is unnecessary to deal with this question.

19. I do not know that there are any safeguards against collusion to protect the offender. Rather, as I have said in answer to question 3, collusion to protect the offender is very common. In my opinion, the best safeguard would be to make such cases Crown cases. It may be argued that it will lead to improper prosecution and extortion. There is, however, no reason to apprehend it in the Indian community, for it is inconceivable for an Indian woman, unless she is a public woman, to come to a court of law with the story of her ineffaceable shame and disgrace with a view to extort some money from a person.

20. As I have already said, the orthodox Hindu community is opposed to sexual intercourse between a husband and a wife being at all made a subject for legislation. In such circumstances I need hardly say that neither the raising of the age of consent nor the fixing of a minimum age of marriage will be in consonance with the orthodox Hindu opinion.

21. Social reform, to be real and enduring, should, in my opinion, be always left to the people themselves and I would rely on the spread of education to ensure the introduction of reforms where reform is necessary. The Hindu community is opposed, and I think rightly, to its socio-religious rites and customs being interfered with by heterogenous bodies like the present day legislatures.

Written Statement, dated the 16th October 1928, of Mahamahopadhyaya KRISHNACHARANA TARKALANKARA, Lecturer in Sanskrit, Calcutta University.

1. Yes.

2. In extra-marital cases, the age should be raised, because the offence is gradually becoming more and more frequent. In marital cases, the age-restriction should be abolished; because the restriction may, in some cases, interfere with the observance of religious injunctions.

3. Seduction or rape by Badinashes has not been prevented or reduced. The punishment for those offences should be much more deterrent.

4. In marital cases no legislation is desirable.

5. Twelve. The age does not differ in different castes or communities.

6. (1) No.

(2) Yes.

(3) Yes, soon after puberty, irrespective of age.

7. Consummation of marriage before puberty is against the Shastras but that at (i.e. very soon after) puberty is in compliance with religious injunction.

8. Yes. Yes it coincides with the consummation of marriage. It is performed after the attainment of puberty not before the first three days are over.

9. Yes, generally.

10. No fixed age can be pointed out. The attainment of puberty is to be regarded as the index of her competency.

11. Cohabitation after puberty does not impair the girl's health provided she is not suffering from any general debility or any other similar disease.

12. "Early" consummation is certainly injurious. But the consummation after the attainment of puberty is not "early."

13. Yes, in extra-marital cases only. It is confined to Hindus in particular because outrages on Hindu girls are gradually becoming more and more frequent.

14. Yes. But never before the attainment of puberty.

16. No age should be fixed. The attainment of puberty should be regarded as the only guide.

17. Yes, for extra-marital offences—something more than ordinary rigorous imprisonment. Specially rigorous or solitary imprisonment coupled with some bodily punishment, such as caning may be suggested as the proper punishment.

18. In marital cases the trial should be held in camera, if the law in marital cases is not abolished.

19. In connection with extra-marital offences collusion to protect the offender is much more common than improper prosecutions. The following safeguards against collusion to protect the offender may be suggested :—

(a) On receipt of information an *immediate* enquiry by a competent officer belonging to a community other than that of the offender should be made.

(b) The offence should be made non-bailable.

(c) Complainants should be given pecuniary help wherever necessary.

20. Neither of the two courses is desirable, and neither of these is in consonance with public opinion.

21. No legislation is desirable.

Written Statement, dated the 6th November 1928, of Mr. BALAI CHAND ADHYA, Assistant Secretary, Hooghly District Women's Protection League, Chinsurah.

Now that your Committee have been recording evidences in connection with the proposed legislation for raising the age of consent, I would request that the following few lines may be kindly considered, before the Committee submit their recommendations :—

At the first instance, I must say that I am strongly opposed to any such legislation. I am of opinion that social reform, if any, must come from within and never through the legislation of an alien Government. A Government, foreign in culture and stranger to our social ideas, should not be given powers to interfere with, far less to control, the internal affairs of our society.

I do not see my way or any reason to lend my support to the proposed raising of the age of consent in the marital cases. In the climatic condition, as it prevails in Bengal, the girls attain their puberty between the ages of 12 and 13 and it would be a negation of all reasons and detrimental to the internal peace of our society if any restriction be sought to be imposed upon the consummation of marriage. I firmly believe that any forced abstinence as proposed in the draft Bill, will tend to leave both the husband and the wife in the "mid air" as it were, which, in the opinion of experts of marriage-science, would have ultimately very bad effect upon the health, particularly of the latter and upon the morals of the society at large. I do not either believe that early consummation of marriage or early maternity is, in any way, responsible for maternal or infant mortality, which are only due to the falling health of mothers on account of poverty and poverty alone and I feel not the slightest hesitation to say that the age of consent has nothing to do with them. In marital cases, therefore, I am strongly of opinion, there should be no legislation in regard to the age of consent and the respective societies should have absolutely free and unfettered hands in controlling their own affairs. The proposed legislation is also against the religious principles of the Hindu Shastras. Besides even if the Bill is passed in Law, it is bound to remain a dead letter for all times to come.

In non-marital cases, however, I would support the raising of the age of consent, to 16 or even to 18, as I believe that would go a great way to check the growing evil of crimes against women. Exemplary punishments should be inflicted upon culprits in such cases.

Kindly acknowledge receipt and oblige.

**Written Statement of Babu DEVENDRA NATH DASGUPTA, B.L.,
Chairman, Rajshahi Municipality, Rajshahi.**

With reference to your letter No. 42A.C.C., dated the 27th July 1928. I have the honour to state that I convened a general meeting of the Municipal Commissioners and the leading gentlemen of the town of various communities with a view to ascertain their views about the proposed amendment to sections 375 and 376, I. P. C. All of them are of opinion that no amendment is called for at the present moment regard being had to the social conditions prevailing now amongst the various sections of the people living in this town. In consonance with their views I beg to submit the following replies to the questionnaire sent along with your letter under reply.

Replies to the Questionnaire.

1. No. We find no dissatisfaction in this town—none complains that any mischief is being done for want of the age of consent being increased.

2. (1) As there is no prosecution for any misuse of the present age of consent there appears to be no demand on this score. In fact girls attain puberty generally between 13 and 14 years of age and people do not consider it necessary to restrict sexual intercourse till later period of life.

(2) No reply necessary.

3. Yes—such crimes are very frequent and the Sessions Court of Rajshahi has to try a good many more of such cases than what it did 10 years ago. The amendment of 1925 has not succeeded in either preventing or reducing cases of rape or seduction of girls. This rise in the number of such cases is due to the low standard of morality among the lower sections of the people amongst whom such cases are very much frequent. Such crimes are not likely to be eradicated or kept down without a raising of their morals which can never be attained without a compulsory education, both religious and moral and physical. The present system of education does not provide for religious and moral training—which must be attended to.

4. Perhaps not. Economic and other conditions have already led to the marriage of girls being postponed till they are 14 or 15 years of age. In some families amongst the lower classes girls are married earlier and this may be stopped by a better training, both moral and religious. In the present state of our society no special steps need be taken on this head.

5. Girls generally attain puberty between 13 and 14 years of age. It is very difficult to answer the latter part of this question.

6. Cohabitation is not common before puberty. In the case of married girls it is rather common that there is cohabitation soon after puberty. As the marriage is mostly deferred till a girl is 13 years old or more it may be taken as rare that there is cohabitation before she completes 13 years. Such cases do not come to court.

7. Yes—It is so amongst Hindus. I cannot quote any authority but we have been hearing about it from generation to generation: but at the present moment this idea is fast vanishing amongst Hindus. There is no such injunction amongst the Mahomedans.

8. Such a ceremony is usually performed amongst the higher castes of Hindus. It is rather just anterior to the consummation of marriage and it is performed just after the girl menstruates for the first time. As a girl is seldom married before she is 14 or 15, this ceremony is gradually falling into disuse or it is performed along with the marriage. Amongst Mahomedans there is no such ceremony.

9. Puberty is a sufficient indication of physical maturity for consummation of marriage but not for child bearing without injury to the girl's health. Age

when she can be said to be fit to conceive depends on her physical development and should never be less than 15.

10. I think we may put it at 15 years.

11. No—I for myself know of one case where a girl gave birth to a child in her 13th year but there was no injury to her body then. I do not know if it affected her health afterwards as she went away from the town.

12. Yes, I do. It is not the only cause for infant mortality.

13. No.

14. No.

15. Yes—at times medical witnesses are found to have failed to make any distinction between 13 years and 16 years of age of girls and this can only be removed with the progress of the medical science. I can suggest nothing else.

16. No.

17. No—it will be enough if the amount of punishment is kept low—I think 1 year should be the maximum punishment for marital offences—in other cases the present maximum should be maintained.

18. No.

19. No.

20. No.

21. I would rely on the latter part of this question. Progress of social reform by education and social propaganda would be the best method to eradicate this evil and must lead to less infant mortality and better and healthy progress.

**Written Statement, dated the 20th August 1928, of Mahamahopadhyaya
Pt. KAMALA KRISHNA Smrititirtha, Bhatpura District.**

3. Crimes of seduction or rape are not frequent in our part of the country.

4. The amendment of the law has not postponed the consummation of marriage to the age of 13, nor stimulated public opinion in that direction by putting off marriage beyond 13.

Our views are that no steps need be taken to coerce people in their social and religious matters.

5. Girls in our part of the country usually attain puberty at the age of 12 or 13, which does not differ, so far as our information goes, in different castes, communities or classes of society.

6. I have no information regarding (1) or (3). After puberty, there is a religious ceremony, *viz.* "Garbhadhan Samaskāra," which enjoins cohabitation.

7. We attribute the practice of the early consummation of marriage, at puberty, to religious injunction.

Manu, Vasistha and the commentator of the Paraskara Gṛhya-sutra lay down that failure to consummate marriage at puberty is tantamount to the killing of the phœtus and is to be atoned for. The texts are annexed herewith as quoted from the original (*vide p. 5*).

8. "Garbhadhan" ceremony is usually performed in our part of the country. It coincides with the consummation of marriage, and is performed invariably one or two months after the attainment of puberty.

13. There has been no development of public opinion in our part of the country in favour of the extension of the age of consent.

14. Women in our part of the country favour consummation of marriage of their daughters soon after the attainment of puberty.

16. The difficulty of error would not be minimised if the age of consent is raised to 14 years or above.

20. So long as the law does not penalise the religious ceremony "Garbhadhan Samskara," we have nothing to say against or for any measures. In any case, we have objections against fixing the minimum age of marriage (by law) which is a religious ceremony.

21. We would prefer to rely on the progress of social reform by means of education and social propaganda.

Observations.

The impartiality of the British rule has ensured peaceful practice of religious rites to the citizens. The Hindu subjects will consider the dignity of their scriptures lowered down, if the Age of Consent or Marriage is rigidly prescribed by legislation.

A post-nuptial ceremony, viz. the "Dwiragamana," is observed among almost all classes of Hindus, and necessarily takes place after the attainment of puberty. This "Dwiragamana" ceremony puts a strong check against early consummation of marriage, by denying the husband even a cursory glance at the young wife in the period intervening the marriage ceremony and this post-nuptial ceremony.

Authorities referred to in my answer to Questionnaire No. 7 (Pages 2—3).

(1) Vasistha :—

প্রযচ্ছন্নয়িকং কন্যাং ঋতুকালভিয়া পিতা ।
ঋতুমত্যাং হি তিষ্ঠন্ত্যাং দোষঃ পিতরমুচ্ছতি ॥

(2) Manu :—

ঋতুস্নাতান্ত যো ভার্য্যাং সন্নিধৌ নোপগচ্ছতি ।
ঘোরায়াং ক্রণহত্যায়াঃ যুজাতে নাত্র সংশয়ঃ ॥

(3) Atri and Kasyapa :—

পিতৃগেহে চ যা কন্যা রজঃ পশ্যত্যসংস্কৃতা ।
ক্রণহত্যা পিতৃস্তুস্তাঃ সা কন্যা বৃষলী স্মৃতা ॥

(4) Bandhayana :—

দদ্যাৎ গুণবতে কন্যাং নয়িকং ধর্মচারিণীম্ ।
অপি বা গুণগীনায় নোপরুদ্র্যাজঃস্বলাম্ ॥

(5) Paraskara :—

তামুদূহ যথর্তু প্রবেশনং.....

(6) The Mahabharata :—

অতোহ প্রবৃন্তে রজসি কন্যাং দদ্যাৎ স্বয়ং পিতা ।
মহদেনঃ স্পৃশতোনমন্তথৈকবিধিঃ সতাম্ ॥

Written Statement, dated the 20th August 1928, of Mr. PHANIBHUSAN Tarkavagisa, Sanskrit College, Calcutta.

1. Yes, there is. So far as the law refers to consent in extra-marital cases it is regarded as unsatisfactory, firstly because the age is not high enough and secondly because the punishment is not exemplary enough. So far as the law refers to consent in the married state, it is also regarded as unsatisfactory, but for a quite different reason. It is generally thought that there should be no legislation regulating the sexual relations between man and wife.

2. The retention or making an advance on the present law in marital cases can only be justified if the community concerned is generally in favour of retaining or advancing it.

As to extra-marital cases there seems to be two circumstances justifying an advance on the present law of consent:—

(i) If the number of cases coming under section 375, I. P. C., decreases hereby.

(ii) If the age of the girl in such cases can be more definitely determined thereby.

3. Crimes of rape are rather frequent in some of the districts of East and North Bengal.

No. Neither the old law nor its amendment has succeeded in reducing these crimes. Though I am in favour of raising the age in extra-marital cases, yet I doubt whether any mere raising of the age will lead to a reduction of the number of these abominable crimes. It can be reduced only by effective measures of moral education along with the imposition of a much more exemplary form of punishment than what is actually imposed at present.

4. (1) It is not possible to say.

(2) No, so far as the large majority of the people are concerned.

(3) No. Though as a matter of fact, marriages are tending to be put off beyond 13, it is clearly due to economic reasons. The law, I believe, is entirely ineffective.

As I don't believe that any good can come out of laws interfering with the sexual relations between husband and wife, I am not in a position to suggest any measures of making the law effective.

5. Generally between 11 and 13. By 'puberty' here I mean the final stage of puberty, i.e., the appearance of catamenia.

I don't think so.

6. (1) No.

(2) Yes, provided—

(a) that the girl be married,

(b) that she is in sound health,

(c) that she is living with her husband. (In our part of the country a girl is usually away from her husband's home for a good part of the first two or three years of her marriage.)

(3) I am not sure, but possibly yes, with the provisos mentioned before.

7. There is no practice of early consummation of marriage before puberty in our part of the country. The practice of consummating marriage after puberty is a definite religious injunction. On this point, the scriptures are entirely at one.

Manu, Yājñavalka, Parāśara, Sulapāṇi, Viṣṇu, Gautama, etc., all agree that the marriage should be consummated within the sixteen days following catamenia of the girl, barring the first four days and certain other inauspicious days. There is also the explicit proviso "if the girl is not in a delicate state of health." For a breach of this injunction, the authorities prescribe no legal or social punishment, but only certain forms of প্রায়শ্চিত্ত ।

[পর্বানারোগ্যবৰ্জ্জমুতাবগচ্ছন্ পত্নীং ত্রিরাত্রমুপবসেৎ ॥ বিষ্ণু ॥

ঋতৌ ভার্য্যাং ন গচ্ছেৎ যঃ সৌহৃদি কৃচ্ছ্রাক্ষমাচরেৎ ॥ বৃহস্পতি ॥

ঋতৌ নোপৈতি যো ভার্য্যাং নিয়তাং ব্রহ্মচারিনীং ।

নিয়মাতিক্রমাস্তু প্রাণায়ামশতং স্মৃতম্ ॥ সম্বর্তঃ ॥

ঋতাবুপেয়াং সৰ্বত্র বা প্রতিষিদ্ধবৰ্জ্জম্ ॥ গৌতম ॥

ঋতুশ্রাতাং তু যো ভার্য্যাং সংনিধৌ নোপগচ্ছতি ।

ঘোরায়্যং ক্রণহতায়্যং পচ্যতে নাত্র সংশয়ঃ ॥ etc., etc. পরাশরঃ ॥

8. Yes.

It always coincides with and is never anterior to the consummation of marriage.

Yes. It is *always* performed after the attainment of puberty. It is not possible to say how soon after. That depends on whether the girl is living with her husband. It always coincides with the first day of cohabitation after the first catamenia of the girl after her marriage.

9. Yes, provided that the girl is in normal health. In my opinion consummation by itself does not tell on the health of a normal girl after her puberty. 'Early' pregnancy also does not necessarily result in injury to the health of the mother or the progeny.

10. At any age after puberty. I take it that by 'due realisation of consequences' is meant realising that cohabitation may lead to pregnancy and the consequent strain on the mother's health.

11. I do not remember to have come across cases of cohabitation before puberty.

I have seldom come across cases where cohabitation after puberty has resulted in injury to the health of the girl or the progeny, provided that the girl is in normal health at the time.

12. No.

13. No. But so far as extra-marital cases are concerned, though there has been no actual development of public opinion in favour of raising the age of consent, yet an extension would not be resented by the people.

14. Women in our part of the country regard it as quite *natural* if marriage is consummated after puberty.

15. I am not in a position to say.

16. I don't think that the difficulty would be materially minimised by any mere raising of the age to 14 years or above.

17. Yes, I would. The marital "offences," in my opinion, are no real offences coming within the jurisdiction of our criminal law. I can't therefore prescribe any punishment for these "offences."

As for extra-marital offences, I am in favour of imposing the maximum punishment under the present law.

18 and 19. I am not in a position to suggest anything.

20. No.

Neither. As I have indicated above, penal legislation fixing any age of consent is repugnant to the sentiments of our people. It goes without saying, therefore, that the fixing of a higher age will be met with unqualified resentment by the vast majority of our people. The suggested alternatives are equally repugnant to the public opinion of our province. By 'public' opinion here I mean the opinion not merely of the 'vocal' section of the people, but the actual opinion and sentiments of the generality of our people. I should add also that in these replies I am always speaking with reference to the Hindus only. I am not competent to pronounce on the customs and sentiments of the Mussalmans.

21. As I have no sympathy with the object in view,—*viz.*, discouraging early marriage—I can't possibly support any penal law relating to it.

But even if I had any sympathy; I would never rely on *penal* legislation in matters of social reform. Penal legislation generally proceeds on the assumption that the people concerned are not in favour of changing a custom which the legislators either do not understand or with which they do not have any sympathy. I am of opinion that *enforcing* a social or a religious reform is an act of downright oppression. This is more so when we consider the present constitution of our legislature which does not make any provision for the representation of Hindu socio-religious views and sentiments. Nobody has any right to enforce a reform on a community against its cherished sentiments. A community, I submit, has

the right to remain unregenerated, social reform where necessary, should always be carried on by means of education, propaganda and persuasion.

Marriage among the Hindus is a religious rite. And as in all religious matters, so here also we rely on the guidance of our *Shāstras*. Early marriage and the consummation of marriage after the puberty of the girl are definite *Shāstric* injunctions. We resent therefore any legislative enactment which goes against our *Shāstras*. Legislation can have no authority over our Scriptural injunctions.

Written Statement, dated the 11th August 1928, of Rai REBATI MOHAN CHAKRAVARTI Bahadur, District Magistrate, Dinajpur.

1. Not much, except among educated classes.

2. Making an advance on the present law is necessary, following answers will give reasons.

3. Yes. The amendment of 1925 has reduced to some extent cases of rape outside the marital state and the seduction of girls for immoral purposes. But further advance is necessary.

4. (1) Has not postponed consummation of marriage when the age of the girl at marriage is near about 13.

(2) Has stimulated public opinion to some extent.

(3) Has greatly helped in putting off marriages beyond 13.

5. This depends a good deal on the health of the girl. Generally it is not earlier than 12th nor later than the 14th year.

Not much difference.

6. (1) No.

(2) Yes.

(3) Yes; if the girl attains puberty.

No; these cases do not come to court.

7 and 8. Consummation at puberty was due to the customary ceremony of "Garbhadan" formerly observed by orthodox Hindus. It was generally performed within 16 days of the attainment of puberty. It was performed anterior to the consummation of marriage. Breach of the ceremony was socially condemned.

9. No. Say two years after attaining puberty.

10. Not earlier than completing the 15th year.

11. Yes; have come across such cases.

12. Yes; surely—one palpable draw-back is that the mother is incapable of taking proper care of the child.

13. Yes, among educated classes. But the mass of the people is apathetic. For this reason, I consider the law limiting the age of marriage necessary, say on the line of Mr. Sarda's Bill.

14. Education has not spread among women sufficiently and so they are still under the influence of the foolish custom which was very prevalent formerly.

15. Yes; even medical officers are sometimes in doubt about the age.

Further increase of the age limit.

16. Yes.

17. Yes. Existing provisions will do.

18 and 19. Existing provisions in the law will do.

20. Both steps are necessary. Fixing the age of marriage is, in my opinion, more necessary than penal legislation fixing a higher age of consent; because the former will automatically help the latter and after marriage the consummation is not generally postponed and is not likely to be postponed,

Educated classes will probably welcome both. Mass of the people will remain indifferent to both.

21. Legislation is necessary. It will strengthen the hand of those who are desirous of introducing social reforms otherwise the progress will be very slow.

Written Statement, dated the 11th August 1928, of Khan Bahadur MAULAVI WASIM UDDIN AHMED, B.L., Chairman, District Board, Pabna.

1. There is no dissatisfaction in this part of the country. As a matter of fact except the lawyers, very few people know of the change in the law. There has not been sufficient trial to express opinion about a change made so recently as 1925.

2. (1) As the law has been changed so lately public have not had sufficient opportunity to form an opinion on the working of the amendment.

(2) There is no necessity to make any advance in the present law.

3. The crimes of seduction and rape are pretty frequent in this part of the country. Effect of the change of 1925 could not be judged within so short a time, either in preventing or in reducing the cases.

4. (1) (2) (3) Nothing has been noticed within so short a period as a matter of fact very few people knew of the change in the law and few still took any steps whether by postponing the consummation of marriage or stimulating public opinion or by putting off marriage beyond 13.

The people should be thoroughly informed about the change in the law through the police, educational officers, Panchayets and Gurus of the village schools. The best thing would be to print pamphlets, dealing on the subject and pointing out the penalty and the national degeneration that may accrue by the breach of the law.

5. 14 years is the usual age at which girls attain puberty in this part of the country, well fed girls of the higher classes specially of the cities attain it a year or two earlier and the village girls specially of the labouring classes, generally attain puberty at the age of 14 years. Malaria stricken and otherwise sickly girls attain puberty a year or two later.

6. (1) Cohabitation before puberty is to be found among the illiterate and low class of people.

(2) Cohabitation soon after puberty is common.

(3) Before the girls complete 13 years is not unfrequent. Very few of them comes to the notice of the court.

7. I do not know of any.

8. I do not know of any.

9. Yes—I generally think so.

10. Very difficult to answer. It varies with social positions, education and environments. I think 15 years can give sufficient idea to the girls as to the consequences of her giving consent to cohabitation.

11. Yes. During my experience both professional and other ways I came across many cases of cohabitation before puberty with the consequence of permanently injuring the health of the girls and prejudicially affecting the progeny. In many cases girls sustained severe injuries to persons. I know of 3 or 4 cases in which girls of 10 to 11 years had to undergo forcible cohabitation resulting in profuse bleeding and injuries to the private parts which took time to heal.

12. Yes, early consummation are principally responsible for high maternal and infantile mortality, also causing national deterioration of the country.

13. Sufficient time has not yet passed since the last amendment.

14. Women in our part of the country favour early consummation only to avoid the displeasure of the husband of the newly married girl.

15. Yes, registration of birth should be strictly enforced and register should be properly maintained at least for 20 years.

16. Yes, if raised to 14 years.

17. Yes, in case of marital offences, unless attended with rupture or severe injuries 1 year rigorous imprisonment is sufficient. In other cases stated above it may be enhanced to 3 years. In case of extra-marital the present law is sufficient.

18. Yes, in case of marital offences, the inquiry should be strictly confidential and by officers not below the rank of Inspector of Police and none but the nearest relations of the parties should be allowed to attend. In case of extra-marital offences, strict secrecy should be observed in cases of girls below the age of 16. And in other cases the ordinary procedure will do.

19. During the long period after Sir Andrew Scoble's amendment there has been no more than 2 or 3 cases in the district. People interested in the prosecution are more anxious to shelter the offender as people in this country think that it would be doing positive injury to the girl herself by punishing the husband for the girl much depend on him for her life. I do not know of any improper prosecution or extortion.

20. No. The law of consent has not been much effective. In marital cases it is of no use, in extra-marital cases it has a value and the present law should be given sufficient trial. In my opinion there should be legislation fixing minimum age of marriage and it should be 13 years, except in cases where earlier marriage is necessary for protection of the person or property of the girls. In which cases too consummation before the age of 13 should be made penal.

21. I prefer to rely on the strengthening of the penal law to secure the object in view. The progress of social reform and education is a question of long period. And social propaganda is equally defective and must remain so, till all-round education can gain ground in the country.

Written Statement, dated the 10th August 1928, of Babu KALIPADA CHATTERJEE, B.L., President, Malda Bar Association, Malda.

1. So far as the generality of the population is concerned there is to my mind, no dissatisfaction whatever regarding the present state of the law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code. Legislative intervention, therefore, seems to be uncalled for and quite unnecessary. Among the literate advanced classes marriageable age of girls is gradually on the increase. In marital cases the raising of the age of consent from 13 to 14 would not be of much value for in practice it would be very difficult to conclusively prove that a particular girl is really 13 or 14. In non-marital cases the age may be raised to 16.

The case of Hindu marriage which is not contractual is very peculiar, and admits of no dissolution of marriage under any circumstances. The marriage tie will subsist even if the husband is convicted of illicit marriage intercourse, and no peace and happiness can be expected in a family where such a husband returns after serving out the term of his imprisonment and the fate of the poor wife will certainly be very miserable.

5. The usual age at which girls attain puberty in Bengal is 12, but in cases of girls of precocious growth living in laps of luxury, puberty is sometimes attained earlier and in cases of sickly girls it is deferred to a later age, say, 14 or 15. But attainment of puberty is not in all cases the sufficient indication that the girl is fit for maternity.]

Written Statement, dated the 13th August 1928, of MAULVI ABDUS SABHAN MAHMOOD, Deputy Magistrate, and Deputy Collector, Malda.

1. There does not exist any pronounced dissatisfaction with the state of the law as to the age of consent as contained in Sections 375 and 376 of the I. P. C. but the educated people feel that it would be better to raise the consent in extra-marital cases.

2. (1) Public opinion is not yet sufficiently advanced and many girls actually attain puberty before 13 years. Hence any legislation penalising cohabitation with wife between 13 and 14 years of age would be resented by many but personally I am of opinion that once the change in the law is made the opposition will die down at once.

(2) The age of consent in extra-marital cases is too low at present. It is necessary to raise the age both on the ground of health as well as on the ground of morality. Among the educated classes the age at which the girls can be married is rising gradually and it is not very unusual to find that girls reach the age of 16 to 20 years or even above before they can be married. Evil influences are at work in every society and however careful the guardians may be it is difficult for them to guard the girls always against corruption. Their task would be easier if the age of consent in extra-marital cases be raised to at least sixteen years, if not to 18 or 20 years.

3. Crimes of seduction and rape appear to be rather frequent among the lower classes of the people though very few cases come to court. I do not think that the raising of the age of consent to 14 years has appreciably reduced the cases of rape outside the marital state or of improper seduction of girls for immoral purposes. Such cases generally take place after the girls pass 14 years. Moreover, the law is not known to the classes among whom such cases mainly take place. In order to make the law more effective the age of consent should be further raised and the law should be made known to all classes of people.

4. (1) Some effect has probably been produced in this direction among the educated classes but it is difficult to ascertain the extent which must, in any case, be very small and is most probably limited to the locality where there has been some case in court.

(2) Public opinion is not very pronounced- some think that law should not interfere after the wife has passed the age of 12 years whilst some are quite indifferent.

(3) I do not think that the change of law has had any effect in putting off marriage beyond 13 years. Very few people take the law on the point seriously.

All that can be done to make the law more effective is to make the law more widely known. Perhaps pamphlets dealing with the evil effects of early conception and the penal consequences of consummation below 13 years may be widely circulated with good results.

5. It is believed that most of the girls of the middle and upper classes attain puberty in the 13th and 14th years. Among the lower classes puberty is attained a little earlier probably on account of the fact that the males and females mix more freely which causes the sexual instinct to develop early.

6. (1) No.

(2) Yes.

(3) Among the lower classes cohabitation often takes place below 13 as the girls of these classes often attain puberty below 13. I am told that among the Puras or Poundra Kshatriyas as they call themselves brides are valued according to the number of years and consequently girls are married very young as bridegrooms are unable to pay for grown up girls. As a rule, therefore, consummation among the people of this caste takes place comparatively early. None of these cases is known to me when come to court.

7. I am not aware of any practice of consummation of marriage before puberty. The general practice of consummation of marriage at puberty among the Hindus seems to be due as much to religious injunction as to the anxiety of the females for the consummation of their children. The religious injunction is said to be contained in the Smritis and the penalty mentioned in the injunction is divine displeasure. There is no religious injunction at work in the case of the Mahomedans.

8. The "Gaona" performed among the lower classes at the time of the consummation of marriage which takes place on the fourth day after the first indication of puberty. The *Garbathan* ceremony is also performed by some people similarly at the time of consummation.

9. The attainment of puberty cannot, I think, be regarded as a sufficient indication of physical maturity to justify consummation of marriage. The rate of development is different for different girls and the condition of general health at the time of the attainment of puberty and after must influence the age at which consummation may be considered to be safe for the girl and her progeny. For a normal girl fourteen years should, I think, be regarded as the minimum age for consummation.

10. The age at which a girl may be regarded as competent to give intelligent consent to cohabitation with a due realization of the consequences may vary from sixteen to twenty years.

11. I know of a married girl whose first child was born at 13 years. She remained practically unconscious for several days after delivery. The second child died a few days after birth. The girl died at the age of 18 one day after the birth of the third child which was still born.

12. Yes.

13. The educated classes are of opinion that the age of consent should be raised at least to 16 years in extra-marital cases. As yet there is no public opinion for extension of the age in marital cases.

14. Yes—very much—even among the educated classes.

15. Provision for more careful registration of births and the raising of the age of consent would, I think, minimise the difficulty.

16. The raising of the age of consent to sixteen years is expected to materially reduce the difficulty or margin of error as in that case the medical men would, I understand, be in a position to give more definite opinion.

17. The punishment for the extra-marital offences should, in my opinion, remain as at present. The punishment for rape by a husband with his wife who is below 12 years of age (which cannot be regarded as heinous as an extra-marital offence) may be fixed at half of that for the ordinary case. The punishment for cohabitation with wife between 12 and 13 years of age should remain as at present. Marital cohabitation when the wife is between 13 and 14 years of age should be punishable with simple imprisonment for one year and fine, provided that the punishment should consist of fine only if the offence be committed after the attainment of puberty, the burden of proving which should lie on the accused.

18. Extra-marital cases and marital cases in which the age of wife is below twelve years should be triable in the Court of Sessions. The other marital cases should be triable by a Presidency Magistrate or a Magistrate of the first class of not less than five years standing. All marital cases should be non-cognisable and in all such cases a preliminary local enquiry should be held by a magistrate of the first or second class, anything to the contrary contained in Section 202 of the Criminal Procedure Code notwithstanding.

19. Nothing can probably be done against collusion to protect the offender and I do not consider it necessary to provide any additional safeguard against improper prosecution or extortion beyond what is suggested in the last para. of the reply to Q. 18.

20. Penal legislation fixing a higher age of consent for marital cases would be far less effective than legislation fixing the minimum age of marriage. The former would be in consonance with the public opinion.

21. In my opinion the object in view will be best secured by gradually strengthening the law with the progress of social reform effected by general education and social propaganda.

Written Statement, dated the 14th August 1928, of Mr. A. F. M. RAHMAN, I.C.S., Sub-Divisional Officer of Kushtia.

1. No.

2. The present law of the age of consent has practically remained a dead letter. Hence any change of it is unnecessary.

3. Crimes of seduction and rape are not frequent in this part of the country.

The amendment of the law made in 1925, did not affect seduction and rape either way.

Any codified law, in my opinion, will not be effective in checking such crimes except in so far as it may help to create public opinion against such crimes.

4. (1) No, because consummation is seldom postponed if puberty takes place before the age of 13 years.

(2) The public opinion is gradually crystallising against early consummation of marriage, but I do not think that the law had as yet anything to do with it.

(3) No.

I would propose to prohibit the marriage of girls before they complete 13 years of age.

5. Girls attain puberty between the age of 13 and 14. This is only a general statement. Among the lower castes of the Hindu society, where early marriage is the custom, girls, particularly the married ones, attain early puberty for obvious reasons.

6 (1) No.

(2) There is reason to believe that cohabitation is practised soon after puberty, as the Hindu Sastras enjoin on the husband to cohabit with his wife after every monthly flow. The *Garbadhan* is the first cohabitation after the first menstrual flow.

3. If the girl attains puberty before 13—yes, but none of such cases come to court.

7. Consummation of marriage is not only not enjoined before puberty, but the Hindu Sastras, prohibit it on pain of Narak (Hell). But consummation is enjoined at puberty by the Hindu Sastras and it accounts for the practice of *Garbadhan* which literally means “accepting pregnancy.” The Islamic law, as far as I am aware, is silent on the subject.

8. The *Garbadhan* ceremony is performed among the Hindus. It is generally performed within 16 days of the 1st mense, when consummation of the marriage is expected to take place. There is no such ceremony among the Muslims.

9. I think at least one year—but preferably 2 years—should elapse after the attainment of puberty, before consummation of marriage should take place, to save the girl and her future progeny from injury to health.

10. 15 to 16 years.

11. I have no personal experience—but a trustworthy friend of mine tells the story of his own experience. It is this. A Brahmin married girl of 13 conceived soon after puberty. She gave birth to a male child in due course. The mother, soon after child birth, became a prey to puerperal diseases and her life was despaired of. But before the husband had another opportunity of cohabitation, he died suddenly of cholera—at the age of about 22. The girl mother came round after a long suffering and is still doing well. The boy has grown to be strong youth. Death would be certain to the mother, had she conceived again.

12. Yes, it is one of the main causes.

13. Yes, but not in favour of legislation. The educated classes are realising that the age of consent should not be less than 15 years. The idea is filtering down, though very slowly, to the lower classes also.

14. No, except perhaps uneducated rustic woman.

15. Yes.

The registration of the birth of girls may be improved in such a manner that the parent or any other natural guardian of the girl may be required to have her name recorded in the Birth Register within a reasonable period. This may lessen the difficulty of ascertaining her age in case of need.

16. I don't think so.

17. Yes. The nature and the present maximum punishment need not be changed.

18. I would retain the present procedure.

19. It is very difficult to bring home the offence of rape even to the real culprit, at the same time it is very easy to bring apparently true complaints of such nature against innocent persons. The only safeguard against both appear to me to be a prompt magisterial local enquiry.

20. I think fixing a minimum age of marriage for girls will be more acceptable than the other alternative. Public opinion will revolt against this also, in the beginning—but it will subside soon and it will help to educate public opinion in the long run.

21. The progress of social reform by means of education and social propaganda can permanently secure the object in view but the progress will be very slow. Strengthening of the penal law will probably achieve this end more quickly, and once the people of this conservative country become adapted to a practice, they will adhere to it. All things considered I prefer to rely on some strengthening of the penal law particularly by fixing of a minimum age of marriage.

Written Statement, dated the 10th August 1928, of Sreejuti INDUJYOTI MAJUMDAR, B.L., Chairman, Pabna Municipality, Pabna.

1. There is no dissatisfaction manifested in acts but there is dissatisfaction in mind.

2. I do not justify the retaining of the law as it is. I am for making an advance on the present law.

The following are the circumstances which justify my opinion :—

(a) The girls of fourteen or below are in most cases not intelligent enough to foresee the after effect of the intercourse.

(b) The census report shows that death rate is greater among the girls of age between twelve and fifteen owing to untimely pregnancy. Health of such girls is shattered after the first child birth.

3. Crimes of seduction or rape are frequent in this part of the country.

No.

In order to make the law effective the age of consent should be raised to the age provided for in the Indian Majority Act and severe punishment provided for.

4. (1)
(2) } No.
(3)

By education.

5. The usual age of puberty in our part of the country is thirteen.

No difference.

6. Cohabitations common soon after puberty.

Cases before the court very rare.

7. There is some sort of injunction in the Hindu Sastra. There is some provision in the Parasar Sanhita that girl should be given in marriage before twelve. That Sastra provides that parent drink the blood of menses if they give their girls in marriage after twelve.

8. The *Gabardhan* ceremony is performed generally after puberty.

9. No.

At the age of thirteen the girl's physical development should be generally considered enough to justify consummations. But this may vary according to the constitution of the girl.

10. Unless the girl is educated she at no age can give an intelligent consent with due realisation of consequences.

11. I have come across one case in which the girl was married at 7. She gave birth to a child at 11 (eleven) but the child died within one year.

12. Yes.

But there are other reasons for high maternal and infantile mortality. Contracting marriage without considering the health of the couple is one of the principal reasons.

13. Yes.

14. X.

15. Register of births should be regularly entered and preserved.

16. Yes.

Difficulty will be minimised if the age be raised to eighteen.

17. Yes.

For extra-marital offence seven years' R. I. and for marital offence two years' S. I.

18. Yes.

19. X.

20. Legislation fixing the minimum age of marriage would be more effective.

21. Both.

Written Statement, dated the 15th August 1928, of Mr. SATYA KINKAR SAHANA, Landholder and Honorary Magistrate, Bankura.

1. Not that I am aware of. Dissatisfaction with regard to the existing law is expected from two different classes of people: 1st :—those who are intent on avoiding the law; and 2nd :—those who heartily wish its effective carrying out. To the 1st class belong the actual offenders and the vast majority of the people who are either silent or active approvers, hood-winkers or lethargic, unthinking, indifferent persons sleepily floating over the turbid and sullied current of social customs. The actual breakers of the law or perpetrators of the crime are divided in two classes; (a) the husbands and (b) the not-husbands. When the offender is the husband, married in accordance with the Sastrie rituals and belonging to a caste or community in which divorce or remarriage of widows or divorced wives is not prevalent, rather looked down upon, neither the wronged wife nor her relatives will think of bringing the husband to law. Even the very rare extreme cases, in which the girl wives, below the age of consent, are almost brought to the door of death from profuse bleeding, seldom see the light of day. Owing to the present social order a hush-hush process mechanically starts and all such cases are confined to the knowing of the near relatives and sealed to the out side world. Bringing the offender to justice will bring no gain to the wife or her parents or their relatives, but will mean irreparable loss to them: the whole life of the wife will be blasted

and her paternal relatives will be looked down in society and shunned as lepers. The castes and communities in which divorce and remarriage prevail, try to imitate the Bhadrалоке and substantial people in all social customs and in cases of crimes under Sections 375 and 376, I. P. C., the same hush-hush process in generally observed among them.

The not-husband wrong-doers may again be divided into two classes :—(a) Those who commit the crime against the will of the girls and (b) those who do it with the consent of the girls and connivance of their guardians and relatives. Class (a) are often brought to justice and punished though in a few cases the violated girls and their relatives apprehending the blasted future of the girls hush up the crimes. As regards the class (b) offenders, I fear, they are seldom brought to law at the instance of the consenting parties and the hand of law is not long enough to reach them.

The 2nd class, i.e., those who wish the effective carrying out of the law, are the thoughtful educated few who have the well-being of society at heart and do not shun the introduction of healthy reforms in society. Their number is very small ; they are hopeful workers and seldom express dissatisfaction.

So if there be any dissatisfaction it is not evident.

2. Though from consideration of the points mentioned in my reply to Q. 1, I venture to think that retaining the law of the age of consent as it is or making an advance on the present law will make little difference in extending the intended protection to the minor girls, yet considering the general deterioration of health of the nation owing to malaria and mal-nutrition, I am for making an advancement on the present law by one year for marital intercourse and of five or at least three years for extra-marital intercourse.

3. In my part of the country crimes of seduction or rape are comparatively few. The amendment of the law made in 1925 raising the age of consent to 14 years has partially succeeded in preventing and reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes.

For making the law more effective in cases of extra-marital intercourse I would propose the raising of the age of consent to 18 (eighteen) if not to twenty. When a girl before she is eighteen is not allowed to lose by her own action even a few pieces of metal or a few kathas of earth given her by her parents or relatives it is not mete that she should be allowed to lose the richest gem given her by the Heavenly Father.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has, I am of opinion, done very little to prevent the sexual intercourse with girl wives below the prescribed age limit by any of the three processes mentioned in the question :—

- (1) As far as I know consummation of marriage depends more on the physical development and mental condition of the girl and her husband than on the age of the girl. Consummation of marriage in my part of the country extends from the 13th to the 16th year of the girl. The amendment has in no way affected this state of things which I have been noticing for the last quarter of a century.
- (2) If by public opinion—the opinion of the educated few is meant—then certainly it has been stimulated. The mentality of the vast majority, most of whom live in the villages, move in the old grooves.
- (3) Girls of the Bhadrалоке class are now generally married between twelve and thirteen ; unmarried girls of 15 or 16 are not so rare now as it was only 30 years ago. This rise in the average marriageable age of girls is, I venture to think, due more to the difficulty in finding out suitable bride-grooms and the costliness of dowries than to the amendment of the law in 1925.

I, for one, think that the protection of girls from intercourse with their husbands, whom they consider to be the nearest and dearest relations and on whom they

entirely depend, cannot be effected by the making of punitive laws. The only way by which the desired effect can be produced is by the improvement of the mentality of the people. For this, I would venture to suggest the spreading of education by free primary schools and the propagating of higher social and hygienic ideas amongst the people by the preparation of books in simple vernaculars on those subjects.

5. In my part of the country girls generally attain puberty between thirteen and sixteen. Mode of living, food, environment and idiosyncrasies make perceptible difference in the age of puberty. Puberty is generally delayed in the girls of the labouring classes. Only a quarter of a century ago, when malaria was not so rampant as it is now, the more healthy and developed girls then used to attain puberty between their 12th and 14th year. I know of sons of 13 years old mothers, who are tall and strong and occupying high and respectable position in society.

6. (1) Not that I have heard of.

(2) It is common.

(3) Rare—the girls generally attaining puberty now by the end of their 13th year.

7. Not to any religious injunction but to nature—the animal in man. Some of the old Smritikars have mentioned *byasindhi* (the junction of the stages of age—the *Pangunda* and *Kuisore*; some have fixed it at 10 and some at 12. After that age the girl is called *Rajaswala* (the menstruated). It is mentioned in some of the Sastras that a twice-born (*Dwijā*) debases himself and lowers himself in society by marrying a *Rajaswala* (menstruated girl). But when in those very Sastras the *Swayambar* (the public choice by a girl of her husband from amongst a number of suitors assembled for the purpose) and *Gandharba* (the choice of the bride and bride-groom made in secret) marriages, in which the girls were not minors but of age have been respectfully mentioned and a strict injunction of keeping the girl a maid all her life in case of failure to find out a proper bride-groom, the genuineness of those lines regarding वयःसन्धि *Byasindhi* and *Rajaswala* may be vehemently doubted. Moreover, in Bengal, where the study of *Smriti* had a strong hold on the Brahmins, the *Kulin Brahmins* the most respected sub-caste of the Brahmins—for the difficulty of finding out a bridegroom of the same *Mel* (agreeability or harmony in sub-caste) used generally to marry their daughters when they were in majority—sometimes when the girls had passed their fortieth year; generally the *Kulin Brahmin* girls were married between the age of 16-24 and this custom prevailed for more than seven hundred years. The *Kulin Brahmins* supported their action by *Sastric* injunction.

8. “*Gaona*” and “*Garbhadhan*”—are two quite different ceremonies. *Gaona*—is from *Gaman*—to go, and means the going of the wife to her husband's house for the second time, the first being the going during the marriage for a few days. In the province of Bengal this ceremony retains its Sanskrit name—*Dwiragaman*—coming for the second time. This ceremony is still observed in Bengal. In special cases, i.e., when the bride is grown up and able to look after the household affairs of the husband who lives in a far off place and has none to look after his household, it has been modified to a nominal performance a few days after the marriage—called the *Dhula Paye Yatra* (i.e., going with the dust of the first-going on her feet). According to the *Sastric* injunction this *Gaona* or *Dwiragaman* has to be performed on an auspicious day found out by a joint consultation of the horoscopes of the husband and the wife, during an uneven year of the wife. If the girl is married on her 10th year the *Dwiragaman* shall have to take place either on her 11th or 13th or 15th year. According to prevailing custom the *Dwiragaman* ceremony is seldom performed after the 15th year of the wife. *Gaona* or *Dwiragaman* has got nothing to do with consummation of marriage; marriage may be consummated before or after it according to the age and development of the girl.

Garbhadhan is a quite different ceremony. It means the impregnation of the wife in an auspicious moment in a religious attitude of mind and after the performance of some religious ceremonies. As it was a costly *Sanskrit* requiring ample

leisure, wealth, learned and religious priests and friends, it has died out altogether. This ceremony was performed long after the wife had attained puberty and was considered fit for maternity.

9. Yes. The animal in man, I fear, can not be prevented from following nature. Consummation of marriage in human beings does not mean sure maternity as it does in the animal kingdom.

10. To the husband, where there is naturally a dependence and a reliance on the intelligence and foresight of the man, fourteen may be a safe age of consent; but to any other person who is not the legally married husband the age of consent should be fixed at twenty or at least at eighteen.

11. I have not come across any such case.

12. It is very difficult to find out what percentage of maternal and infantile death is due to early maternity and what to poverty and malaria and physical deterioration proceeding therefrom. There can be very little doubt that in the present deteriorated physical condition of the nation early maternity affects the intellectual and physical well-being of the nation to some extent.

The remedy for this, I venture to say, does not lie in the enactment of laws or increasing the age of consent but in removing poverty and its consequent malaria, in spreading education, in supplying pure drinking water and helping the people in the production and consumption of more and a better kind of food.

13. Reply to this to be found in my reply to Question 1.

14. Ignorant women, in low surroundings, do, but educated or better informed women do not.

15. In the papers I read of one or two cases of elopement where there was difference of opinion regarding the age of the girl amongst the examining doctors. At the present state of human knowledge, I cannot think of any process of ascertaining the age of a girl better than the scientific examination by doctors. I cannot comprehend how the raising of the age of consent will remove the difficulty of ascertaining age of the girl.

16. I do not think so.

17. Certainly. For the offence of violating the law regarding age of consent I would suggest six months to one year's imprisonment for the husband and transportation or ten years' imprisonment with fine for the not-husband.

18. In marital cases trial by Magistrate in camera and the girl examined on commission; in extra-marital cases ordinary trial by the Sessions Court with protection of due privacy to the molested girl.

19. Some hints have already been given in my reply to the Question 1. No law of Parliament will make a nation virtuous. Until the moral standard of the people is raised by spread of education no enactments, I fear, will prevent the offence of protecting an offender.

20. Any attempt at legislation fixing the minimum age of marriage will be revolutionizing society. Reforms and not revolutions are required for social improvement. Penal legislation fixing a higher age of consent should be the only move that way at present.

21. As I have already mentioned in my reply to Question 4, I have greater faith on the progress of society by means of education and social propaganda than on the enactment of Penal laws. For the present, the existing Penal laws may be strengthened, but to attain the desired object, a strong move should be made towards education and propaganda.

Written Statement, dated the 13th August 1928, of Mr. MAHMOOD ALI, Police Magistrate, Alipore.

1. No. The number of reported *rape* cases being few public attention was not much attracted to it. It will probably continue to be so as in marital cases there is

scarcely any chance of report. The occurrence, is more likely to take place at husband's house and his relations would not go against him and the relations of the wife may not get any information. In extra-marital cases the girl may be an orphan or her relations including parents may be agreeable party for money under stress of poverty or they may be led to suppress it for avoiding a family scandal and also for the future of the girl that there may not be any difficulty to give her in marriage.

2. The present law did neither hasten nor delay the marriage but it or any modification over it is likely to influence the public opinion and *modus operandi* in its favour and on that assumption and for the fact that consummation of the marriage takes place as soon as practicable after it (the marriage) the following points may be considered in favour of the retention :—

2. (1) (i) The more the girl advances in years after 12th more she is likely to be amorous and easily excitable to sexual passions and as such more easy victim she becomes to abduction for immoral purposes. Her higher age does hardly enable her to think of consequences specially for her ignorance as to how venereal diseases are contracted.

(ii) In her tender years she may be trained up according to the ideas and environments of her husband's family resulting in her future happiness and that of the family.

(iii) There would be less number of rape cases by husband.

(iv) Suitable match available there would be no hesitation on the part of parents or guardians to betroth the girl.

(v) Early marriage they say begets lasting affection between the couple as the girl would hardly think of her connection with another man.

(vi) In some cases a match settles up family disputes specially over properties and the son-in-law becoming heir and manager of a minor wife or a widowed mother-in-law's estate with much profit to himself and also he turns to be a source of happiness to the family.

(vii) A girl in this country attains puberty generally at 12th year of her age and she then under Mohammedan Law becomes free to select her husband. This is thought to be a sort of natural freedom and interference with it by law will in some cases be resented.

2. (2) Points in favour of advance :—

(i) The marriage will be delayed with the result that degeneration of the race due to early marriage will be checked.

(ii) Girl's education will be continued which after marriage is cut short.

(iii) Given hygienic and other practical education she would become a better mother and housewife than in the case of a girl of tender years. She may be taught how immoral life affect human system and begets misery. A girl of comparatively mature age will understand such teachings.

(iv) The number of child widows will be much less.

(v) She may select her partner in life not blindly.

(vi) Parents and guardians will be much relieved of the anxiety experienced in the case of a girl of tender years.

3. Reported rape cases as noted above, are very few. But actually the number of such and seduction cases are thought to be large. The amendment does not appear to have affected the position in any way as the people in general are ignorant of the law. To make the law effective I would suggest extensive propaganda work under the auspices of the Health Department and through various associations of women. Thanks to the present awakening in the country against the 'Parda Sytem,' such a task would now be easy. I would also penalize the other party when she is over 12 at which age a person is recognized to distinguish right from wrong.

4. No. The same procedure as suggested in answer No. 3 should I think be adopted except that wife shall not be penalized.

5. In 12th year. No, not very much. If any, it is negligible.

6. (1) Before puberty not common but few.

(2) Almost common.

(3) Common in marital state and not few in extra-marital cases. All classes are equally responsible.

Scarcely any of these cases come to court for reasons stated in answer No. 1.

7. No. On the other hand according to religious injunction in *মঙ্গলসংহিতা* or Mohammadan Law cohabitation before puberty is decried.

8. Garbhadan is performed in marital state only in many Hindu houses as soon as puberty is attained and a week or so anterior to the consummation of the marriage.

9. No. After 16th year of her age.

10. After 16th year provided she be given religious instructions in the subject. Religious because she will not violate them easily, her frame of mind being constituted in such a manner (for her environments society) as to enable her to receive important physical instructions through her religion more effectively than otherwise. Compilations of books of theology on the subject with illustrations of auster, lives of saints and great men and medical opinion might be encouraged. Books containing such matters along with various other things exist but I mean books compiled exclusively on the subject under reference.

11. Girls married before 14 became mothers in about a year after and gave birth to other children a year after with the result that their health was shattered not only for the births but also for night keeping for the care of children and for their ignorance of nursing children the latter suffered and died. But in some cases of such marriages I found the progenies quite healthy throughout.

12. Yes. This is begetting race degeneration though people are indifferent about it.

13. No. Only in a very limited circle.

14. Probably not for children but for its own sake.

15. Yes. Medical examination is the only source. The medical officer gives only approximate age. By making arrangements for testing ossifications at all District Headquarters and by effectively penalizing any failure to report birth and by payment of rewards to persons supplying correct informations as to the birth in all cases of suppressions or neglect.

16. I do not think so. Margin of error remained as before.

17. No. I do not see any justification for the husband to be treated leniently. I would propose a sliding and same scale of punishments for marital and extra-marital cases as follows:—

When the girl is of 12 or below 12 . Imprisonment which may extend to 10 years and fines.

When the girl is above 12 below 14 . up to 7 years and fines.

When the girl is above 14 below 16 . up to 5 years and fines.

18. No. except that all cases should be made triable by Magistrates of the 1st class as well. Only graver ones being committed to Court of Sessions.

19. No.

20. Penal legislation fixing a higher age of consent would be more effective Penal legislation fixing the age of marriage will be resented as it would interfere with natural freedom of marrying a suitable couple. The former would be more in consonance with public opinion of the country.

21. I would prefer both.

Written Statement, dated the 11th August 1928, of Mr. CLIFFORD NORONHA, Deputy Magistrate and Deputy Collector, Dinajpur.

1. No. The law is unknown to the uneducated or semi-educated classes, and these form the vast majority of the people in Bengal. Even thoroughly educated people have very hazy notions on this point, they know that there is such a thing as an Age of Consent Law, but what that age is they do not know. One would expect that of all classes of people lawyers and Magisterial Officers would be most conversant with this law. I questioned several of them but over 50 per cent. were ignorant of the exact age. Where ignorance of a law is so universal, there can hardly be any dissatisfaction about it.

2. In my opinion there should be an advance on the present law and for the following among other reasons :—

(a) In the case of unmarried girls, it would prevent, to some extent, crimes of seduction or applications for permission to lead the lives of prostitutes, as the girls would not be free agents and would continue to be under their parents' control till they had reached better years of discretion. Boys and girls are considered to be minors and are not allowed to dispose of their property till they reach the age of 18. It is only reasonable that in the more important matter concerning their own persons, the age of consent ought to be raised to 18.

(b) In the case of married girls, a raising of the Age of Consent if properly notified and promulgated might result in later marriages or cohabitation, this would give a chance to girls to get better educated and to learn how to look after both themselves and their children better. At the same time, later marriage or cohabitation would mean better developed girls, physically, and this in turn would mean healthier offspring as well as less maternal and infantile mortality.

3. Without figures it is difficult to tell. Seduction, however, does not appear to be unfrequent. Without figures again it is difficult to tell whether the amendment of the law in 1925 has made any difference as regards the number of cases of rape or seduction. In the short space of 2 or 3 years it is not easy to judge accurately the working of this law, even if figures be supplied, because changes for 1 or 2 years may be due to causes older than this law. Personally I do not think that the amendment has made any difference in the number of crimes for the very simple reason that the most people have not even heard of the amendment.

4. For the reason just given above, I do not think the amendment of 1925 has been effective in protecting married girls from cohabitation within the prescribed age limit by means of any of the three ways mentioned. At the same time it ought to be mentioned that in Bengal, among educated people, girls are not usually married before 13. This is not on account of the amendment of 1925, but because enlightened public opinion is already in advance of the law as it now stands and moreover on account of economic conditions, parents find it difficult to get bridegrooms for very young girls.

The law when amended, should be promulgated far and wide. Circle Officers, Thana Officers, Presidents of Union Boards should be told to give the law as wide a publicity as possible and at the same time to explain the necessity and reasons for it.

5. Between twelve and thirteen. It may be a little later in the case of the poorer and labouring classes as hard work, want of nourishment, etc. may retard puberty a little.

6. Cohabitation is rare before puberty. Girls usually live with their parents after marriage and are generally sent to their husband's houses as soon as they attain puberty.

Cohabitation is common soon after puberty and as girls reach puberty between 12 and 13, it follows that cohabitation frequently takes place before the girl completes 13.

Cases very seldom come to court. It is only when cohabitation with very young girls has resulted in serious illness, that cases do sometimes see the light of day and even in such cases, the girls' people try to hush up matters.

7. I don't think so. Even very orthodox Hindus are not quite certain about this.

8. The 'Gaona' ceremony is very rarely performed in Bengal, and practically never among the educated people. It is usually performed soon after the girl has attained puberty and for the purpose, so to speak, of showing that she has attained puberty. Consummation usually follows soon after this.

9. No. Usually about 4 or 5 years after the girl attains puberty. Much however depends on the constitution of different girls.

10. I don't quite follow the question. If by the words 'due realization of consequences' is meant simply the result of cohabitation as distinguished from too early cohabitation, then I think a girl of 13 or 14 would be able to give an intelligent consent.

11. No.

12. Yes; conception on the part of girls not sufficiently developed from a physical point of view is bound to bring about unhealthy offspring, and is also responsible for high maternal and infantile mortality. Early marriages mean uneducated wives and mothers, women with undeveloped minds and wills, and as it is upon them that the training of the infant mind and will depends it will be seen how important a part the mother takes in the intellectual and physical progress of a people.

13. People generally seem to be in favour of raising the Age of Consent in the case of unmarried girls, but most people seem to think that legislation in the case of married people will be harmful rather than otherwise. In the case of educated people it is unnecessary as they are already ahead of the law and do not marry their daughters early. In the case of villagers, it will only give touts and the police a chance to make money, and also to ruin the happiness of many homes.

I have examined several thousands of people as witnesses in my capacity of Magistrate, but not even two per cent were ever able to state their own ages correctly. Parents are never able to give the ages of their children, in the case of girls the only thing they go by is puberty. This being so the raising of the Age of Consent in the case of married girls by a year would hardly make any difference or be of any use to the girls themselves, though on the other hand, touts and others would see in it an opportunity for making money and would certainly make use of it.

14. I don't think so.

15. In cases in Sections 375 and 376, I. P. C. If a question of age comes in, difficulties are usually experienced. Doctors are generally unable to state the age definitely. Of course they can always tell whether a girl is 10 or 16, but whether a girl is 12 or 13, or 13 or 14, etc., they are generally unable to say.

16. I am unable to offer an opinion.

17. Yes. For marital offences a maximum of about 2 years would be sufficient.

18. Only certain ranks of officers might be allowed to investigate marital offences, and trying courts might be directed to prosecute all persons found trying to shield the offender or guilty of extortion or improper prosecution. Doctors and medical people could also help a great deal by bringing many cases to the knowledge of the Head of a District or Sub-division.

20. Legislation fixing the minimum age of marriage would certainly afford greater protection to girls, because once marriage takes place how is anyone ever to know when intercourse takes place. Even if the Age of Consent be raised if marriage takes place early, the parties are bound to cohabit soon after puberty and for every case that comes to court, there are bound to be hundreds that will go undetected. Fixing of a minimum age however would not be in consonance with public opinion, as it would deprive the people of a certain amount of liberty.

21. On both without a law reform by means of education and social propaganda would probably be soon neglected.

Written Statement of Shreemati INDIRA DEVI CHAUDHURI.

1. Yes, amongst the English educated Indians.
2. I think that the change in our social and economic conditions justify an advance on the present law.
- 3 and 4. Have no knowledge of the deterrent effects or otherwise of these laws; but should think that the discussion about them would stimulate public opinion; and the very existence of such laws would tend to postpone the age of marriage.
5. Between 10 and 12 years of age.
6. (1) No.
(2) and (3) Should not think there would be any hindrance after attainment of puberty.
Don't think cases of this kind come to court.
7. No, even if there be any injunction in the Shastras, different communities follow their own traditional customs, not the Shastras.
8. No.
9. No. Broadly speaking a girl may be said to be fully developed in this country about the age of sixteen.
10. Sixteen.
12. Certainly, inasmuch as early marriage means maternity for girls physically and mentally unfit to become mothers, it also means the lowering of the vitality, energy, endurance and intelligence of the race.
13. Yes, generally.
14. No.
16. Yes, if raised to sixteen.
17. Yes. Punishment should be less for marital and more for extra-marital offences.
20. Fixing a minimum age for marriage would be certainly much more effective than fixing a higher age of consent, which would most likely remain inoperative within marriage, and very difficult to enforce, if not impossible, as most people resent legal interference in social matters.
21. Social reform from within is the surer method of the two, and the more desirable in many ways. But it is also the slower. And in view of the vastness and variety of our country and its people, and the importance of the subject, it were better to have a law applicable to the whole of India, which would have the effect of speeding us on the right way, without further waste of valuable time, but certainly with due precautions and safeguards.

Written Statement, dated the 14th August 1928, of Mahamahopadhyaya Pandit SITIKANTA Vachaspati, Professor of Smriti, Sanskrit College, Calcutta.

1. A section of the cultured and educated communities of India have shown dissatisfaction with the state of law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code. I mean those who are dissatisfied with the present law want to raise the age of consent but in my view the majority amongst the cultured and educated communities who constitute the conservative and orthodox class and the masses have not yet shown any such dissatisfaction. On the other hand, the conservative class have always resented interference by the State in the matter of the age of consent as between husbands and wives.
2. The age of consent in marital state should be retained as embodied in the Indian Penal Code, as marriage according to Hindu conception is not a contract but a sacrament and in view of the Sastrie injunctions mentioned below and also

considering the fact that first menses of Indian girls generally come before they enter upon the fourteenth year, the age of consent in marital state should not be increased ; while outside marital state such age may be raised to 16 years as proposed in order to check the crimes of seduction and rape committed against the uneducated and unprotected girls of immature intellect.

3. Crimes of both seduction and rape are rather frequent in Bengal and specially in the eastern part of the province ; but crimes of seduction preponderate over the crimes of rape. The amendment of law made in 1925, in my view, has not succeeded in preventing or reducing the cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I would, therefore, suggest the following measures to make the law effective :—

- (i) Social reforms without offending against Sastras.
- (ii) Spread of female education and protection of helpless girl widows.
- (iii) Raising the age of consent to sixteen years in extra-marital state with deterrent punishment for infringement, as provided for at present.

4. The Law of the age of consent within the marital state has been, all along, for all practical purpose, a dead letter and the majority of people are not even aware of the offence. The amendment of 1925 cannot be said to have been effective in protecting married girls within the prescribed age limit either by postponing the consummation of marriage or by putting it off beyond thirteen years. I am not in a position to deny that it has not stimulated to some extent the public opinion among the cultured and educated class against early marriage. Marriage of girls beyond thirteen is generally becoming rare amongst the cultured classes, though that fact is due more to the economic condition of the people and spread of education than to the amendment of 1925.

I would propose the following measures to make the law effective :—

- (i) In cases of immature girls, who have not menstruated before 13 years, by stimulating public opinion and by spread of education with a view to establish a practice and the inclination of the people not to send young wives to husbands' family until they become mature. In order to effectuate this purpose the law of guardianship as prevailing in Hindu Law may have to be changed making the parents guardians of the girls until the latter become fit to discharge the onerous responsibilities of a wife.
- (ii) In cases of girls, who have menstruated before 13 years, the law of consent in marital state will, I apprehend, continue to be a dead letter amongst the conservative class, who are inclined to follow the Sastrie Injunctions. The practice of permitting consummation of marriage after puberty though the girl has not completed thirteen years has taken such a deep root in our society, that even those, who profess the more liberal and progressive views, do rarely take any active steps to prevent such consummation even in their own family.

5. Menses do usually occur among the girls in Bengal between 13 to 14 years, though exceptions are not rare, when owing to the over-nutrition and good health, specially in rich families menses may occur earlier.

6. Cohabitation cannot, in my view, be said to be common in any part of the country, either before puberty or before the girl completes 13 years. It is however, common soon after puberty in marital state though the girl has not completed her 13 years.

I have not seen any such case come to court.

7. There is no religious injunction for consummation of marriage before puberty. But Dharma Shastras are unanimous in enjoining consummation of marriage after puberty. Some of the authorities are quoted below :—

- (1) ঋতবৃৎপেয়াৎ । Gotama Dharma Sutra Ch. V, Sutra 1. The husband shall approach his wife during the period of *ritu* (as explained under authority (4) below).

- (2) ঋতৌ চ সন্নিপাতে দারেণান্বৃত্তং । Āpastambha Dharma Sutra,
Prasna II, Patala I, Khanda I, Sutra 17.

When menses (*rtu*) appear, the husband shall approach his wife as a sacred duty.

- (3) ঋতুকালান্তিগামী স্ত্রীং স্বদারনিরতঃ সদা । Manu III, 45.

The husband, being exclusively attached to his own wife, shall approach her during the period of *rtu*.

[a] গর্ভাধানযুতো । Yaj I, II—The ceremony called Garbhadhana or consummation of marriage shall be done during the period of *rtu*.

- (4) [b] ষোড়শতুর্নিশাঃ স্ত্রীনাং তাস্থ যুগ্মাস্থ সংবিশেৎ । Yajnavalkya I, 79.

The sixteen days computed from the day, on which menses appear are considered as the period of *rtu*. During the period, the husband desirous of procreating a son shall approach his wife in the night on even days (after having excluded the first four nights).

- (5) গৃহস্থস্য ঋতুগমিত্বং । Kantilya, Adhikāraṇ I, Ch. 3.

One of the duties of a householder is to approach his wife during the period of *rtu*.

- (6) গর্ভস্থস্পষ্টতাজ্ঞানে নিষেককর্ম । Vishnu, Ch. 27, Sutra 1.

The ceremony called Garbhadhana or consummation of marriage shall be performed after it is known that menses have apparently appeared. (Translation according to the Commentary called the Vaijayanti of Nandapandita.)

This injunction, however, is to be followed by the husband if he is near his wife or in other words if the husband and wife are living together and are free from disease and physically fit to procreate issue. (For authorities Mitāksharā under Yājñavalkya I, 81 and Vishnu, Ch. 69. Sutras 15 and 16 may be referred to.)

It will also appear from the texts cited above, that consummation of marriage before puberty is forbidden by necessary implication.

Garbhadhāna ceremony was prescribed by the Hindu sages at puberty because they considered that the attainment of puberty was a sufficient indication of physical maturity to justify consummation of marriage for procreation of issue. Gobhila says :—"When a girl menstruates, then comes the proper period for procreation after the menstrual discharge has ceased to flow." Quoted by Raghunandana in his work called Samskāra-Tattvam. Mitāksharā also while commenting on Yājñavalkya I, 79, cited above, defines *rtu* as the period which indicates that the woman has become physically fit to hold conception.

Owing to the prevalence of this view the Hindu sages unanimously enjoin that girls should be given away in marriage before the appearance of their menses and that in default those responsible for giving her in marriage and the husband incur sin and are looked down upon in society. The following are some of the authorities in support of my observation :—

- (1) প্রদানং প্রাগঋতৌঃ । অপ্রযচ্ছন্ দৌষো । Goutama Dharma Sutra Ch. XVIII, Sutras 22 and 23.

A girl should be given in marriage before the appearance of menses. In default, one incurs sin.

(২) প্রযচ্ছেমগ্নিকাং কন্যাস্তুকালভয়াৎ পিতা ।

ঋতুমত্যাং হি তিষ্ঠন্ত্যাং দোষঃ পিতরমুচ্ছান্তি ॥

Vasishtha Dharma Sutra, Ch. XVII.

A father apprehending the appearance of menses, should give his daughter in marriage while she is *nagnikā* (that is to say, before she menstruates). The father incurs sin if his daughter remains unmarried after the appearance of her menses.

(৩) কন্যা দ্বাদশবর্ষাণি যাহপ্রদত্তা গৃহে বসেৎ ।

ব্রাহ্মহত্যা পিতৃহন্তাঃ সা কন্যা বরয়েৎ সযম ॥

(Yama cited in Udvāha Tattvam.)

The father of a girl dwelling in his house unmarried till her twelfth year, becomes guilty of killing a Brahmana. Such a girl can herself choose (a suitable bridegroom).

(৪) পিতুর্গেহে চ যা কন্যা রক্তঃ পশ্যতাসংস্কৃত্য ।

ব্রাহ্মহত্যা পিতৃহন্তাঃ সা কন্যা বুধলীপিতা ॥

বস্তুভাং বরয়েৎ কন্যাং ব্রাহ্মণো জ্ঞানদুর্বলঃ ।

অশ্রাদ্ধেয়মপাত্তেয়ং তংবিদ্যাদ্ বুধলীপতিং ॥

(Atri and Kāshyapa cited in Udvāha Tattvam.)

The father of a girl who menstruates, before marriage, in her father's house, is guilty of infanticide. Such a girl is regarded a *Vrishati* (a Sudra).

That Brāhmana of little knowledge who marries a girl (who has attained puberty), should be known as one whose *Sraddha* (funeral oblations) is not to be performed, and with whom people should not take their meals sitting in the same row ; he should be regarded as the husband of a Sudra woman.

The Garbhadhana ceremony is one of the ten ceremonies that are observed by all classes of Bengal.

Transgression of the injunction for consummation of marriage at puberty leads to sin and the Dharma Sāstrās have prescribed penance for expiation. Vishnu prescribes that three days' fasting shall be observed for not cohabiting with wife during the period of her *ṛtu*. Vṛhaspati lays down that he who has not approached his wife during the period of *ṛtu* shall perform half of the penance known as *Krichhra*. While Samvarta has provided for the penance of a hundred *Prāṇāyāma* for the breach of the rule. All these authorities may be found collected in Sulapāni's *Prāyas-chitta*. Viveka where the author concludes the subject with the remark that in case of repeated transgression of the rule, the penance known as *Prājāpatya* is prescribed.

8. Garbhadhana ceremony is usually performed especially in mofussil in my part of the country. No Garbhadhana ceremony can be performed according to Dharma Sastra, nor is actually performed, before puberty. It is performed generally after the attainment of puberty and at the time of the appearance of the first menstrual course after marriage.

Garbhadhana ceremony usually coincides with the consummation of marriage after puberty which is prescribed by the Dharma Sastras as the principal period for the ceremony, though instances are not rare when the recitation of *mantras* for the ceremony is deferred till after the consummation and is performed with later ceremonies enjoined by Sastras. I mean that the Garbhadhana ceremony

consists of two parts, viz., (i) the recitation of *mantras* including the invocation and worship of deities, and (ii) consummation of marriage by cohabitation. Sometimes owing to inconvenience of the parties and other circumstances, the latter part of the ceremony is gone into earlier and the former ceremonial part is performed along with a later ceremony enjoined by the *Sāstras*.

9. In the absence of disease and ill-health, the attainment of puberty is, in my opinion, a sufficient indication of physical maturity to justify consummation of marriage. In view of my opinion as stated above, the second part of the question does not arise.

10. It is very difficult to give a definite answer to this question. It depends much upon the education (which is practically wanting in the majority of the cases) of the girl to give such intelligent consent. I think that even if the age of consent in marital state be raised as proposed (to which I do not agree), the girl would not be competent to give such intelligent consent. Consequences of marital relations is a matter to be considered, and it is usually considered, by the parents of the girls.

11. I have not come across any such case as is contemplated by this question.

12. I am not in a position to hold that early consummation and early maternity are responsible for high maternal and infantile mortality or intellectual and physical deterioration of the people. In some cases, no doubt, these practices may be partly responsible for the consequences but other important factors must be taken into account before we fix the full responsibility for the evil consequences upon those practices prevailing in India from time immemorial.

13. Barring the opinion of a few members of the educated and cultured classes of Bengal, there has not been any further development of public opinion in any part of my country since the amendment of the law in 1925 to justify any extension of the age of consent in marital cases. The general public are decidedly against such extension. But in view of the prevalence of the crimes of rape and seduction against young girls and unprotected widows, it cannot be denied that the public opinion has since then developed in favour of an extension of the age of consent in extra-marital cases.

14. Women in my part of the country cannot be said to favour early consummation of marriage for their children. But they do favour consummation of marriage for their children only after the latter have attained puberty and become fit to bear or procreate issue.

15 & 16. These questions are not in my sphere of experience.

17. I would like to separate extra-marital and marital offences into differences, prescribing for the latter lighter punishments.

18 & 19. These questions do not come in my sphere.

20. Public opinion in my part of the country is decidedly against the interference by the state with the age of consent in marital cases and I am of opinion that it has not been at all formed or developed to such an extent as to justify an extension of the age of consent in marital cases either by penal or civil legislation.

21. To secure the object in view I would rely on the progress of social reform by means of education and social propaganda. A living law if allowed to change and grow with the change and growth of society will be more beneficial to the people and effective in its purpose than a readymade legal instrument shaped and produced from the legislative anvil of India.

Written Statement, dated the 13th August 1928, of Mr. CHUNI LAL MUKERJEE, Senior Deputy Magistrate, Bogra.

1. There is some disaffection with the state of the law as to the age of consent, as contained in sections 375 and 376, Indian Penal Code.

It is mainly limited to the ignorant people or to such class of educated men, as are highly conservative in social matters.

2. The circumstances which justify the making of an advance on the present law, are the following :—

- (i) Grave evils arising from an early or premature consummation of marriage.
- (ii) Child-bearing at early age which undermines the health of the married couple to a very considerable extent—not to speak of the origin or birth of sickly and unhealthy children.
- (iii) An advance on the present law is expected to check the crimes of seduction or rape of immature girls.

3. Crimes of seduction or rape are frequent in our part of the country. It is true that the amendment of the law made in 1925, raising the age of consent to 13 years, has not succeeded in preventing or reducing cases of rape, outside the marital state, nor in the improper seduction of girls for immoral purpose, to any appreciable extent.

Nevertheless, it is a move in the right direction, which, in course of time, will produce good results and check such crimes, after the lapse of a few years more.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years is gradually becoming effective in protecting married girls against cohabitation with husbands within the prescribed age-limit, by stimulating the public opinion in that direction.

It may be noted that the period of 3 years (which elapsed since the amendment) is *very short* and it cannot be expected to bring about any appreciable or considerable change in this part of the country, where there was no such legislation before.

5. The age at which girls attain puberty in this part of the country is between 12 and 13 years, generally speaking. In few cases, they attain puberty at 10 or 11 years.

Roughly speaking, the girls of labouring classes, who live by manual labour from early age, attain puberty somewhat earlier than those of the well-to-do classes (who do not live by labour).

6. Cohabitation is common in this part of the country *after the attainment of puberty*—except in cases of attainment of puberty *before the age of 13 years*. Such cases are not very common.

7. The practice of consummation of marriage *at puberty* is attributed to religious injunction, among the Hindus (e.g., the *garbadhan* ceremony). The authority is the *Manu* and *Parasur Sankhitas*. The breach of this *Sastric* injunction is punished by sufferings of the soul in hell (after death).

8. The *garbadhan* ceremony (referred to in the preceding Answer) is generally performed within 8 or 10 days *after the first menstruation* of married girls. It coincides with the consummation of marriage.

9. The attainment of puberty is not in all cases a sufficient indication of physical maturity to justify consummation of marriage, but it is very often taken in that light irrespective of the physical fitness of the girls. This is really the cause of consummation of marriage before proper time, which brings about the natural evil consequences.

It is difficult to lay down any hard and fast age-limit at which a girl's physical development may be considered sufficient for consummation of marriage. Generally speaking the proper age is, and ought to be, after 14 years excluding *exceptional cases of very early attainment of puberty* (in which the age-limit is between 12 to 14 years).

10. This is also difficult to say. Roughly speaking, the proper age for a girl in India at which she can give intelligent consent to cohabitation may be after 14 years of age. In cases of girls living in hill-tracts (e.g., Nepalee girls) the proper age will be between 15 and 16 years.

11. Such cases are rare and they seldom come to court except in cases in which death results.

12. This may be answered *in the affirmative*. There can be no gain-saying of the fact that early consummation and early maternity are mostly responsible for such evil consequences.

13. There has been very little further development of public opinion in favour of the extension of the age of consent since the amendment of 1925. It is generally confined to educated classes. The reason is that the period of 3 years is rather very short.

14. This question may be answered *in the negative*. Exception to this rule is observed in women of the illiterate and lower classes and in prostitutes.

15. Difficulties are experienced in such cases, when the medical evidence is vague and indefinite (which is rather common). The courts cannot but depend upon the opinion of medical men who are seen to give *definite* opinion in very rare cases.

The best measure appears to be to raise the age of consent to 14 years in marital state and to 16 years in extra-marital cases.

16. The answer to this question may be given in the affirmative. In this country, the difficulty arises from the fact that *dates of birth* are not available during trials in almost all cases.

17. There should be of course a distinction between these 2 classes. The maximum punishment in *marital cases* ought to be 2 years, or fine or both, and in the extra-marital cases it should be transportation for life, or 10 years' rigorous imprisonment and fine.

18. In marital cases, the District Magistrate should try the offenders and the Sessions Judge in other cases.

19. In marital cases, no police officer below the rank of an Inspector should take cognizance. The age of consent should also be raised to 14 years in such cases.

20. Both the measures should be adopted to provide for effective check. Each of these alternatives will be viewed with disaffection by the ignorant and bigotted classes of persons but such opposition ought to be disregarded *for the welfare of the country*.

21. One should rely upon both—although education or propaganda work will be a more popular measure, the success of which, however, is not only doubtful but a matter of a long period of time.

Written Statement, dated the 14th August 1928, of K. C. CHUNDER, Esq., I.C.S., Barrister-at-law, District and Sessions Judge of Noakhali.

1. As far as I know there appears to be very little dissatisfaction as to the present state of the law as to the age of consent as contained in Section 376, Indian Penal Code. The more advanced section of the people would like to raise the age, but any general dissatisfaction has not become appreciable.

2. I do not see any reason for not changing the age of consent except some doubtful passages in the Hindu Sacred Books. There are other Hindu sacred books which contain contrary opinions. The reason why I should recommend an advance on the present law is that the present law is not in consonance with the present advanced ideas of the Twentieth Century. Further in the peculiar conditions of the more orthodox Hindu Society where girls are secluded and kept under Purdah they are not in a fit position to be able to form an independent idea of things till they are much older. The immaturity of understanding of even older Purdanasheen women has received judicial recognition even from the Privy Council and it is idle to say that much younger girls kept behind Purdah are able at such an early age as fourteen to form an intelligent opinion on sexual matters.

3. As cases of seduction and rape are very rare in this district I am not in a position to form any opinion on the effect of the changes introduced in 1925.

4. The effect of the amendment of 1925 does not appear to have been appreciable the reason being that economic conditions and advance in ideas are tending to raise the marriageable age amongst people in Bengal. I would leave it to better education and the spread of more up-to-date ideas to effect the necessary changes and to raise the age of consent.

5. A Doctor would be better able than myself to express opinion in this matter.

6. No such cases have come to Court before me. Whether cohabitation is common amongst any class of people before puberty or soon after the puberty or before the girl completes 13 years is a matter on which medical men will be able to speak with greater authority than myself.

7. I would attribute the practice of early consummation of marriage where it exists to a mistaken interpretation of religious injunctions. Authorities may be found on either side and it would appear that particular sacred text writers were giving expressions to their own individual opinions. In case of certain authors penalties for breaches of their religious injunctions seem to be prescribed but those penalties are such that any sensible man will not worry his head about them. To take some concrete examples a text writer named Yama makes it a sin akin to that of killing a Brahmin to keep a girl unmarried when she attains twelve. Another writer makes failure to cohabit with a wife who has attained puberty as sinful as killing a child. Such sinfulness may daunt perhaps an orthodox spirit but I see no reason to pay any attention to them.

8. Garbh-adhan ceremony appears to be performed in some families in Bengal on the attainment of puberty and as far as I can find out it is performed within the 16th night from the time when the girl has her first menstrual discharge.

9. In a hot climate like that of India girls attain puberty much earlier than their physical maturity will justify consummation of marriage. I am disposed to think that an age of about 18 is perhaps the lowest at which marriage can be consummated without injury to the girl's health or that of her progeny. Medical men are likely to be better fitted than myself to speak with authority.

10. I would fix at least 18 years as the age when the girl can give an intelligent consent to cohabitation with a due realization of consequences.

11 & 12. A medical man is in a better position to answer these questions than myself.

13. As I have already said present economic conditions and social progress in some parts of Bengal are tending to raise the age of marriage but except in the case of educated classes I cannot see any development in public opinion.

14. Women who have been brought up in the Orthodox way and are imbued with orthodox superstitions may favour early consummation of marriage for their children whilst I find women who are educated certainly do not do so.

15. As there are not proper facilities for radiological and other examinations in a Muffusil station it is very often difficult to determine the age of girls in rape cases. Measures I would suggest would be for better equipment of hospitals in District Head Quarters.

16. I do not see that there will be any appreciable reduction in the margin of error in determining the age by raising the age of consent to 14 years or above. Better up-to-date scientific method of examination would be a greater help.

17. I would separate extra marital offences from marital offences and I would retain the present punishment in the Indian Penal Code for extra-marital offences and reduce the maximum punishment in case of marital offences, because the injury done to a woman by forcible sexual intercourse by one who is not her husband is much greater than the injury done to her by the husband himself. In case of extra-marital offences there are social consequences to the women which may blast her whole life whilst in the case of the husband the only damage done is to her health and perhaps her mind.

18. I would retain the present safeguards about investigation in case of marital offences and would take them away from the category of offences triable by Court of Session only.

19. The present safeguard of prosecution for false charges seem to me to be sufficient.

20. As economic and social conditions are raising the age of marriage at least in Bengal any legislation fixing the minimum age will be really not of much use. To prevent sexual intercourse between husband and wife in the gradual decreasing number of early marriages penal legislation fixing a higher age of consent is likely to be more effective and more in consonance with public opinion if there is any public opinion in Bengal on such matters.

21. I would certainly prefer social reforms by means of education and social propaganda rather than strengthening of the penal law to secure the object in view.

Written Statement, dated the 13th August 1928, of Babu MAHENDRA KUMAR GHOSH, M.A., B.L., Offg. Chairman, Khulna Municipality.

There is not much dissatisfaction with the state of Law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. The proposed insertion of a new Section 376-A would suit the purpose. But the punishment should be reduced to 6 months.

2. The retention of the present law as to the Age of Consent is sufficient because girls in this part of our country attain puberty usually just after 12 years of age. Public opinion and general education amongst the people have to a great extent discouraged cohabitation with physically undeveloped girls in upper classes of the society. With the progress of education masses will also follow the lead of the upper classes.

3. The crimes of seduction or rape are not very frequent in our part of the country. The figures of rape before and after 1925 are usually the same. For the improper seduction of girls for immoral purposes, an Act after the model of the Calcutta Suppression of Immoral Traffic Act of 1923 would suit the purpose.

4. The married girls who do not attain puberty are usually protected by the custom of our society against cohabitation with husband within the prescribed age-limit and, rarely by law.

5. The usual age for attaining puberty is between 12 and 13 years. Amongst the upper classes and the healthy girls the usual age is just after 12 years. Amongst the others the age does not exceed 13 years.

6. Cohabitation in marital cases is common amongst the people soon after puberty. Cohabitation before puberty is rare. There has recently been only one case within the last 10 years, tried in the Court of Sessions here where a husband was prosecuted for cohabiting with his girl wife.

7. The practice of early consummation of marriage at puberty is due to the personal inclination of the husband and not to any religious injunction. There is no religious injunction about early consummation and there is no penalty prescribed.

8. Amongst certain classes "Garbadhan" ceremony is usually performed. At present the people are discouraging the practice. This ceremony, wherever practised, is anterior to the consummation of marriage. This ceremony is performed after puberty as soon as possible where the practice exists. Amongst the upper classes of the society this practice has been abandoned.

9. The attainment of puberty is certainly not a sufficient indication of physical and mental maturity. Girls cannot give intelligent consent to consummation unless they attain an age from 18 to 20 years.

10. 18 to 20 years.

11. We have no such experience.

12. High *maternal* and infantile mortality is due rather to ill-nourishment of the mothers and infants than to early consummation of marriage. The dire poverty of the people, lack of Government's efforts to teach the people the rules of sanitation and hygiene are the causes which result in such high mortality and deterioration of the intellectual and physical progress of the people. High infant mortality is due also to want of sufficient quantity of cow's milk in the country and want of pure milk too.

13. There is no further development. But there is a growing consciousness in the people about the extension of the marital age of girls.

14. No. Some women want early marriage for their girls but not early consummation.

15. Yes. In a case which was tried by the Sessions at Khulna the Jury differed from the Civil Surgeon as to the age of the girl. The Civil Surgeon reported that the girl was under 13. The Jury differed and was of opinion that her age was above 13. On a reference to the High Court, the accused was acquitted, as the Hon. Judges agreed with the verdict of the Jury.

It is very difficult to suggest any measure for minimising such difficulties.

16. It would not improve the position much as it is difficult to distinguish girls between the ages from 13 to 15.

17. Yes. For extra-marital offences, punishment should be more severe. The maximum punishment in such offences should be up to 12 years, and in marital offences, the maximum punishment should be up to 6 years.

18. Same procedure of trials for both kinds of offences would do.

19. In cases of this kind always special Jury should be called in to try the case. In every case of prosecution for marital offences, a responsible magisterial investigation preceding the prosecution should be made compulsory.

20. No. As the marriageable age of girls going up and up with the advance of public opinion neither of these alternatives is now favoured by the people.

21. I would like to depend more on social reform and on the advancement of education and social propaganda for achievement of the object in view.

Written Statement, dated the 14th August 1928, of Rai A. B. DE Bahadur, Magistrate-Collector, Bogra.

1. There is some dissatisfaction with the state of law as it exists.

2. Instances are not infrequent for girls below 16 years of age being seduced for immoral purposes and if the age of consent is raised to 16 years this will be an effective check on seduction of minor girls for immoral purposes. The raising of the age of consent will indirectly stimulate public opinion in the direction of protecting minor girls against cohabitation.

3. Crimes of seduction and rape are rather frequent in this part of the country. Owing to the illiteracy of the masses the amendment of the law made in 1925 has not succeeded in preventing or reducing such cases besides seduction and rape of girls below 14 is less frequent. It is generally seen that girls of somewhat older than 14 generally attract the attention of the lewd.

4. The public opinion has to some extent been stimulated otherwise it does not appear to have been in any way effective.

This can be made effective by spread of education and certain amount of propaganda work by the Health Department of the Government and by penalising marriages below 13 years. I am, however, not in favour of penalising marriages for I consider that in a few years the necessary reform will of itself be effected by forces of circumstances and because I consider that there are many conditions which compel unwilling parents or relations to give marriages of girls before they complete 13 years.

5. Between 12 and 13 years. It does not materially differ among different castes or communities.

6. (1) Cohabitation is not common in this part before puberty.

(2) It is common soon after puberty.

(3) Rather common before girls complete 13 years in case they attain puberty before 13 years.

7. The practice of early consummation of marriage soon after puberty amongst the Hindus is due to a great extent to *Garbhadan* ceremony.

8. *Garbhadan* ceremony coincides with the attainment of puberty and is generally performed as soon as possible after attainment of puberty. It is anterior to consummation of marriage.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In Bengal at the age of 15 years, i.e., about 2 years after puberty a girl's physical development is generally considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. At the age of 16.

12. I consider early consummation and early maternity to some extent responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people.

13. Amongst the educated and middle classes there has been a development of public opinion in favour of marriages of girls after 14 years but there is generally a dislike for legislation in the matter.

14. The women do not favour consummation of marriage for their children before puberty.

15. No great difficulties have been experienced in this part to determine the age of girls in connection with offences under Sections 375 and 376, Indian Penal Code. Medical evidence and the corroboration afforded by oral evidence, are all that can be expected in proof of the age of girls.

16. I do not consider that the margin of error or difficulty in determining the age would be materially reduced or minimised if the age of consent is raised to 14 years or above.

17. I would separate extra-marital and marital offences into different offences.

I would suggest the following punishment:—

376-A. Rape. Illicit married intercourse by husband with wife not under 12 and under 14 years, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

376. If the sexual intercourse was by a man with his own wife being under 12 years of age, accused shall be punished with transportation for life or imprisonment of either description which may extend to 10 years and fine.

18. I do not consider any difference in the procedure of trials for offences within and without marital state, necessary.

19. No safeguard beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion is necessary.

20. I am of opinion that penal legislation fixing a higher age of consent for marital cases will be more in consonance with public opinion in this part of the country than fixing the minimum age of marriage.

21. I would prefer on the strengthening of the penal law to secure the object in view so far as age of consent is concerned and on the progress of social reform by means of education and social propaganda so far as the proper minimum age of marriage is concerned.

Written Statement, dated the 15th August 1928, of the Marwari Trades Association, Calcutta.

1. Yes.

2. The circumstances which in the opinion of the Association justifies making an advance on the present law are :—

(a) So far as the intercourse with a woman who is not wife is concerned, 14 years of age is not sufficient to give the necessary discretion to the woman to give her consent freely and with full knowledge of the consequences thereof. The age of 16 is preferred because after the attainment of this age the woman is in a position to understand and realise her position before giving her consent. The intercourse being illicit, the law can be made strioter in this respect.

(b) So far as the intercourse of a man with his own wife is concerned the age of 13 is not sufficient, because she is not in a physically fit condition at that age to lead married life. The lowest age at which such intercourse may be allowed ought to be 14.

3. No experience.

4. The amendment of 1925 has not been effective in protecting married girls or postponing consummation of marriage on stimulating public opinion in this direction or by putting off marriage beyond 13. This law is almost a dead letter so far as married couples are concerned and it is difficult to prove such cases. The steps that ought to be taken on make it effective are that proper publication ought to be given to this law so that it may reach the masses.

5. If puberty means starting of the menses the girls attain puberty at 13 years of age, but it is earlier amongst lower classes, generally at 12 years of age.

6. Cohabitation is common in this part of the country soon after puberty. here are cases in which it takes place before the girl completes 13 years but that is not the general rule. Generally it takes place after 13 years. Such cases do not come to Court.

7. There is no religious injunction for consummation of marriage before or at puberty. It is popularly believed that there is a religious injunction to marry the girls before attainment of puberty in the sense stated above. The authorities are quoted from "Manu" and other writers. We do not know of any penalty for its breach.

8. Gauna ceremony is usually performed in this part of the country. It generally coincides with the consummation of the marriage and it is generally performed after the attainment of puberty at the age of about 14 or 15.

9. The attainment of puberty is not sufficient indication of physical maturity to justify consummation. The age at which the physical development may be considered to be enough to justify the consummation without any injury to her own health is 16 years.

10. 16.

11. It is a matter of common experience that cohabitation before full physical development has resulted in injury to the health of the girl and the resulting progeny is almost weaklings.

12. Yes.

13. Yes.

14. Yes.

15. No experience.

16. Cannot say.

17. As regards punishment in case of sexual intercourse by a man with his own wife between 13 and 14 the punishment should be confined to a fine not exceeding Rs. 500 and in default of payment of the fine simple imprisonment may be awarded. In other cases we support the amendment.

18. No.

19. No.

20. We do not consider that penal legislation fixing the higher age of consent for marital cases is likely to be more effective than legislation fixing minimum age of marriage because it is very easy to find out when a marriage has taken place but it is almost impossible to know when the consummation takes place. Fixing the minimum age of marriage would be in consonance with public opinion in this part of the country.

21. We rely upon the progress of Social Reform by means of education and social propaganda.

Written Statement, dated the 15th August 1928, of Rai JATINDRA NATH GHOSE Bahadur, B.L., Chairman, District Board, Khulna.

In my opinion the amendment of Section 375 in 1925 has had very little effect on the community. The Society is following its own course irrespective of the law. The present economic condition of the people, the difficulty in securing suitable match and the change in the social and domestic habits due to the impact of western culture are all contributing to the general rise of the age of marriage. Now-a-days very few marriages take place among the upper class people long before puberty. But consummation of marriage after puberty is a religious and moral injunction with the Hindus and is held to be highly desirable among the Mahanimadans and I think it will go on in spite of the law. Consummation of marriage before puberty is a rare phenomenon and even if it takes place it is not likely to come to light even in one case out of a thousand for which the present law is more than sufficient. 'Garbadhan' ceremony which is usually performed in our part of the country is a check upon such consummation. It is to be generally performed as soon as possible after the attainment of puberty.

My view is that the strengthening of the law will be of little avail; it will only wound the susceptibilities and religious and ethical feelings of the Hindus and if very strictly enforced will contribute to increasing the cases of improper seduction for immoral purposes. In our country girls generally attain puberty between 11 and 13 years and owing to climatic conditions they are precocious to a degree and unless steps be taken for providing universal education, moral training and occupation of those girls and for changing the whole religious and moral outlook of our society the deferring of the consummation of marriage till a conventional age long before which many of the girls are likely to attain puberty will lead to a state of immorality—which is unknown in our society and which must be resisted by all means. It will encourage lies and may even tend to break our whole social fabric built upon very sound foundation of wise Sastrie injunctions and long established customs which have weathered many a storm. I am therefore strongly against penal legislation for extending the age of consent in marital cases and am in favour of leaving the society to adjust itself to new conditions of things slowly and without severe shock. I believe the public opinion in this part of the country is entirely with me. I am not one of those who believe that the early marriage is responsible for our physical deterioration and infant mortality, the cause of which should be sought elsewhere. I know many healthy, strong and stout people who are outcome of early marriages but have enjoyed or are enjoying long life. I do not believe the percentage of such persons are higher among the issues of people married in advanced age.

As to extra-marital cases I have no objection to fixing any higher age as free and promiscuous sexual intercourse is against all our moral and religious teachings and social habits.

I am prepared to appear before the Committee if necessary and support my views with facts and figures and authorities.

Written Statement of B. B. SARKAR, Esq., I.C.S., Joint Magistrate and Deputy Collector, Sub-Divisional Magistrate, Meherpur (Bengal), dated the 14th August 1928.

1. Some dissatisfaction is appreciable among the parents of girls in educated society, who consider the age limit to be too low.

2. There is a good case for making an advance on the present law by increasing the age of consent both in and outside the marital state. The reasons are as follows :—

- (i) It is impossible for a girl of 14 to appreciate the consequences (both physical and social), accrue to her if she gives consent to the sexual intercourse outside wedlock.
- (ii) Sexual intercourse with husband takes place when the wife is very young. As a result children are born as soon as the wife attains puberty. Instances are numerous of the physical deterioration of both the mother and of the baby in such cases. The babies are always underdeveloped and often fail to survive. So far as Bengal is concerned it is very often seen that the first child does not live. The reason is nothing but the immature development of the child born of a mother who herself is not sufficiently developed. Various ailments of the mother after the first delivery is also a very common thing. All these are to be attributed to early sexual intercourse and early childbirth.

3. These crimes especially seduction are quite frequent in this part of the country. Many cases of rape, however, do not come to the court as due to social mandates it becomes the interest of the raped woman and her family to conceal the fact.

The amendment of 1925 does not seem to have any appreciable effect in those cases, for generally the cases of rape that come to the court are those where the offence was committed against the will of the woman.

4. The amendment of law of 1925 raising the age of consent to 13 years, had no effect in protecting married girls against cohabitation in any way. Consummation of marriage takes place very soon after marriage irrespective of the age of the girl (provided of course that she is not a baby and some of her secondary sexual characters are developed). Public opinion has scarcely been affected by the amendment and girls still continue to be married exactly at the age at which they were married before.

The only step which would protect married girls against early cohabitation is to postpone marriage (by legislation or otherwise) till they are physically fit for it.

5. Approximately at between 13 and 14. Puberty is attained about a year earlier in the cases of the lower classes who marry their girls very early; for in these cases cohabitation before the attainment of puberty (which takes place in very many cases due to early marriage) stimulates the sexual instincts of the girls and leads her to attain puberty earlier.

6. As has already been said above cohabitation before puberty is very common. Girls are generally married before the attainment of puberty and cohabitation takes place soon after marriage irrespective of the age of the girl. This very frequently happens before the girl is 13. None of these cases come to the court.

7. I am not aware of any religious injunction for the consummation of marriage before puberty but, there is a widespread and well recognised religious law for getting the girls married before they attain puberty. There is a religious injunction for the consummation of marriage on the 4th night after the first menstrual flow. This is called *ritu raksha*. I am not aware of any penalty for its breach.

8. In this part of the country there is a ceremony performed on the first appearance of the signs of puberty (first menstrual flow). The ceremony is called "Dwitia Bibaha" or *Punarbibaha* (2nd marriage). I am not aware of any other ceremony of this kind. The ceremony is quite common.

9. This question is for the doctors to answer. From ordinary experience, however, it appears that the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. The numerous cases of female diseases from which women suffer after the first child which is very common lend support to the view. The minimum age for consummation of marriage should be (as it appears from common experience) about 18 years.

10. The age of course should vary with the mental development of each individual. Generally speaking it can be taken that all the consequences (social and otherwise) are not fully appreciated before the age of about 20.

11. Cases are numerous in this part of the country in which cohabitation after puberty but before full physical development of a girl resulted in injury to the health of herself and of her progeny. The high infant mortality specially the death of the first born baby which is very common in this part of the country (as has already been indicated) is an instance in point. It is also seen that the death rate of girls between the ages of 14 and 16 is very high. The main cause is childbirth before the girl is fully developed for it. It is not necessary to mention any concrete cases as these instances are very common and are well recognised everywhere.

12. Yes. The answer has been given in the last question. Early consummation of marriage is undoubtedly one of chief contributing factors in bringing about the high maternal and infantile mortality as well as of the physical deterioration of some of the people. There are, however, other contributing causes as well.

13. Yes. It is for raising the ages but the opinion is confined to the educated people of liberal views. The ordinary mass is indifferent.

14. Yes. The elderly women have an idea that unless a child is born to a girl before she is 16 years of age, there must be some defect in her power of procreation she is blamed accordingly. As a result a girl shows a great desire to get a baby as soon as possible. Apart from it the girls also show a great desire for babies themselves.

15 & 16. A doctor is the most competent man to answer these questions.

17. Yes, because the consequences of the crimes are different in the two cases. In the case of rape outside matrimony, the girl has a face not only the physical consequences (e.g., childbirth) but also social ostracism and calumny for the rest of her life. These are absent in the marital state. Only physical injuries to the girl are the possible consequences.

The punishment may be transportation for life and imprisonment for two years respectively in the two cases (non-marital and marital).

18. Yes. The provisions in the procedure that exist at present seem to be quite suitable. The law should show some consideration for the maintenance of integrity of family life.

19. No more safeguards seem to be practicable.

20. A legislation fixing a higher age of consent will not be effective; for breaches of the law will never come to the notice of the court except in very rare and exceptional cases. The other alternative will be more effective and of the two will be more in consonance with public opinion.

21. Social reform by means of education, and social propaganda is a very slow process specially in a country like India which is conservative to the core. Penal legislation will be more effective for achieving the object in view. It should take the form, however, of a bill as proposed by Mr. Sarda.

**Written Statement, dated the 15th August 1928, of Mahamahopadhyaya
PANDIT ANANT KRISHNA SASTRY, Calcutta.**

1. The codified provision is practically a dead letter. The consummation of marriage (Garbhadhan) is generally performed on the attainment of puberty and there is no dissatisfaction.

2. The law of the age of consent should remain as it is for further raising of the age would seriously affect the religious susceptibilities of the people and cause widespread dissatisfaction.

3. Crimes of seduction or rape are not frequent in this part of the country. I do not think the raising the age of consent to 14 years succeeded in preventing or reducing cases of rape or seduction. Prompt action by the police to apprehend the culprits seems to be the only means to stop these offences.

4. I do not think the amendment of 1925 raising the age of consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husband within the prescribed age limit.

The religious sentiment of the people requires that the marriage of girls should be performed before puberty and consummation of marriage on the appearance of first menstruation. I do not think any steps are required.

5. The usual age at which girls attain puberty is 12 to 14. Almost all the girls attain puberty between the age of 13 and 14. I am not aware that this differs in different castes, etc.

6. Cohabitation is not common before puberty but it is common after puberty. Cohabitation takes place before the girls complete 13 years if they attain puberty before that age. None of these cases come to Court.

7 & 8. Consummation of marriage at puberty is enjoined by religious injunctions. The Hindu Sastras enjoin certain religious ceremonies called Garbhadhan on the first happening of puberty. All Hindu Sastras refer to this ceremony and its uses and objects are explained in all books. Many ceremonies have to be observed. The husband and wife have to fast and gods have to be worshipped and Sradh has to be performed. The Mantras that have to be recited on this occasion conclusively establish the point that Garbhadhan has to be done on the first menstruation.

There are a number of Mantras mentioned by Bhabadeva which all mention "first occurrence of the menstruation".

The Ashwalayan Grihya Parisishta, Chap. I, clearly enjoins that the ceremony has to be performed on the first occurrence of menstruation.

Garbhadhan coincides with consummation of marriage. It has to be done within 16 nights after the first menstruation.

Garbhadhan is usually performed in this part of the country.

All genuine Hindus observe this ceremony. Its antiquity dates from the oldest times, and this practice has been observed in our country continuously without any intermission. In all religious books whether they are Vedas, Smritis, Puranas, this ceremony has been emphatically insisted on.

By its omission, one incurs sin and the progeny born of him becomes unholy and impure in the eyes of the Shastras.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

10. No definite age can be fixed in regard to it. Puberty which varies with physical development is the only point to be taken into consideration. All girls attaining puberty can give consent to cohabitation.

11. I have not come across any case in which mere cohabitation after puberty resulted in injury to health or prejudicially affected her progeny.

12. I do not think consummation after puberty can be said to be early consummation and early maternity is not in my view solely responsible for infantile mortality or in any way affecting intellectual or physical progress of the people.

13. Since the amendment of 1925 I do not think there has been any further development of general public opinion in favour of an extension of the age of consent (marital or extra-marital).

14. All women favour consummation on the attainment of puberty.

15. There has been considerable difficulties in determining the age of girls in connection with offences under Sections 375 and 376 and also under Section 363 of the Indian Penal Code. No doctor can be sure about the age of a girl when there is the difference of a year or so and no two doctors will agree as to the precise age of a girl when the difference of a year or six months is in question. I think the attainment of puberty should determine the age of consent. Medical science can easily determine whether a girl has attained puberty or not and extraneous evidence will will also be much more reliable if menstruation is fixed as the limit.

16. Nobody whether a medical or a layman can positively swear whether a girl is 13 years six months or 14 years. The difficulty in determining the age will not be reduced if age of consent is raised to 14 years or above.

17. Yes, they should be treated as different offences and the punishment in marital offences should be a nominal one and that for the other class remaining as it is.

18. I would suggest a difference in procedure of trials. The husband should not be treated as an ordinary criminal.

19. Not necessary if puberty is made the age of consent. There should be some restriction as to who should be the complainant.

20. I would not prefer any of the alternatives. People consider their religions as sufficient safeguards which enjoin —

(1) Marriage before puberty, and

(2) Consummation on the attainment of puberty.

21. I am against the codification of any penal law in such matter. The normal evolution in all matters religious and social should not be interfered with by any legislation. The Civil Law should not interfere with the marriage law, marriage being a sacrament with the Hindus.

**Written Statement, dated the 16th August 1928, of Khan Bahadur
MAULVI EKRAMUL HUQ, M.L.C., Berhampore (Bengal).**

1. None is noticeable.

2. No advance on the present law need be made as there is some agitation in the country against such a measure.

3. No. Cases of rape have neither increased nor decreased.

4. When married earlier and living with the husband I do not think girl below 13 escape the consequences of marriage. In some cases consummation is postponed by keeping the girl away and public opinion is gaining ground in favour of postponement of marriage.

5. (12—13) years. Development depends upon the amount of comfort and castes, communities and classes of society have only a little to do with it.

6. (1, 2 and 3) No. A few cases come to Court.

7. No, so far as Muhammadans are concerned.

8. No. At 16 years, i.e., 3 or 4 years after attaining puberty.

9. At 15.

10. A developed girl married at about 11 years of age and gave birth to a child in about a year. The child expired and the girl lost her health for good.

12. Yes. To some extent sickly children who are generally the result of early marriage cannot make a robust and intellectual nation.

13. Yes, but it is confined to intellectual class and even among them many would not like further legislative interference.

14. Yes. This, owing also to the difficulty of securing a good and suitable bridegroom in time.

15. Yes. In the absence of genuine birth registration certificates the highest probable age given by a very competent medical authority should be taken to be the age of the girl.

16. Not necessary. The amount of punishment is to depend upon the nature of injury caused in each case.

17. The law as it stands need not be disturbed.

18. None. Public opinion would not like either.

19. Education and social propaganda should be the only means to secure the object in view.

Written Statement, dated the 14th August 1928, of Rai A. C. DUTTA Bahadur, Officiating Magistrate of Pabna.

1. No.

2. (1) The girls are seldom married in this country before 14 years of age. The age of consent does not really affect the people in general in practice. So the law of the age of consent may be retained as it is. The reform should be left to education and creation of public opinion and cannot and should not be forced by legislation. So there is no necessity in my opinion of making an advance in the present law.

3. The legislation of 1925 has not made any appreciable change one way or the other.

4, 4 (1), 4 (2) and 4 (3). Yes. This question does not arise in this district as girls are seldom married before 14 years of age.

5. 14 years. No, so far as known.

6. Cohabitation is common in this part of the country soon after puberty.

In upper classes.

Rare.

None of these cases come to court.

7. No.

8. Yes. It is generally performed after the attainment of puberty after marriage.

9. Sometimes it appears that the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. In the case within age of 16 a girl's physical development is considered to be enough to justify such consummation.

10. At 15 or 16 years.

11. My own experience is very limited. Not noticed anything in my experience where bad results can be definitely ascribed to child-marriage as there were other factors responsible for these.

12. Yes, I do.

13. The people in general are indifferent and apathetic to these slight changes which do not affect them in practice.

14. No.

15. Yes. As the Medical Officers find it very difficult to state age between age of 13 and 17. 2nd Molar teeth are out at 13 and wisdom teeth at 17 and difficulty is experienced in ascertaining the age between 13 and 17.

16. I am not in a position to answer this. Only the medical experts are competent to answer this.

17. Marital and extra-marital offences should be separated from different offences. Maximum punishment would be from 6 months to 2 years in case of marital and from 2 years to 5 years in extra-marital cases.

18. Ordinary procedure in the Criminal Procedure Code for trial is quite sufficient.

19. There is hardly practical to suggest if the parties would like to settle.

20. I do not believe in legislation in effecting social reform. Fixing the minimum age of marriage would raise volume of opposition and in the present state of the country when the difficulty of marriage is so keen among the upper and middle classes nothing should be done to add to those difficulties.

21. I would rely on the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 13th August 1928, of Mr. T. C. MITTER,
District and Sessions Judge, Pabna.**

1. No.

2. I think it will be necessary to make an advance in the present law by raising the age to 16 years instead of 14, as in clause (5) of Section 375, I. P. C. The absence of education amongst the majority of the girls is my reason for it. In marital cases, I think the age should be maintained at 13 years, in view of the fact that the majority of the girls attain their puberty before that age and their parents are anxious to give their girls in marriage before attainment of their puberty.

3. Crimes of seduction and rape are quite frequent in this part of the country. The raising of the age of consent to 14 years does not appear to have succeeded in preventing or reducing cases of rape, or improper seduction of girls for immoral purposes.

4. Yes, to a certain extent. Amongst the educated classes it has the effect of putting off marriage beyond 13 years, but not in the case of mass of people who are quite uneducated.

5. Girls generally attain puberty between 11 and 13 years of age. It differs in different classes and castes according to the occupation of the girls. Those accustomed to work and go outside their houses generally attain puberty at a later period.

6. (1) Not common.

(2) Common in those who advocate child marriage.

(3) No, except when the marriage is put off beyond 13.

7. The consummation of marriage before puberty is not enjoined by religious authority.

8. "Garbhadan" ceremony coincide with consummation of marriage and puberty and very soon after it. "Gaona" ceremony is found in Lower class here and may take place at any time before the attainment of puberty.

9, 10 & 11. It is for the medical profession to give answers for them.

12. It may contribute to a small extent towards it, but it cannot be said that it is mainly responsible for the high maternal and infantile mortality.

13. Not, that I know of.

14. Women favour early consummation of marriage only on attainment of puberty and not otherwise.

15. Great difficulty is experienced in determining the age of consent of girls between 14 and 16. The maintenance of birth registers strictly according to law is the only solution of this.

16. I think not.

17. If the age of consent in extra-marital and marital offences are raised as suggested, I think, 2 years will be the maximum punishment of the offences of this class.

18. No.

19. No.

20. No. The marriageable age has already been raised amongst certain section by stimulation of public opinion and by reason of the economic condition amongst them. I do not think therefore that a penal legislation fixing a higher age of consent for marital cases will be more effective, as it has not been in the past.

21. I would prefer to rely on the progress of social reform and social propaganda by means of education, to prevent early consummation in marital cases and not on strengthening the penal law by raising the age of consent beyond 13 years. When the Shastric injunctions in this part of the country forbid consummation of marriage before attainment of puberty, early marriage though prevalent in certain section of the uneducated class, should not be penalised. Especially the present Section 375 of the I. P. C. is quite sufficient to safeguard against the probable evils that may be anticipated in those marital cases below the age of 13.

Written Statement of Mr. BAIDYANAATH SANYAL, B.L., Bilvakunja, Bogra, President, Bar Association, Bogra, Camp—Calcutta, 12-B/5, Indra Roy Road, Bhawanipur, Calcutta, dated the 12th August 1928.

1. There is generally no dissatisfaction with the state of the law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code; but the educated section of our community want to raise the age of consent and that of marriage, at least, to 16 years to save immature girls and their ill-fated progenies from the early premature death. The proposal of raising the age of consent and that of marriage may create some flutter in the orthodox dove-cotes, but I am confident that all such opposition will be disarmed if the provision be passed into law.

2. There are no circumstances, which can justify in retaining the law of the age of consent as it now stands. I venture to think that law relating to age of consent should be modified and the age should be raised to 16 years. The Medical science tells us that body and internal organs of girls do not become sufficiently mature before the 16th year and that they do not develop sufficient degree of understanding at age of 14, to judge for themselves and to give unbiassed opinions as to such "consent," as wrung out from them will be beneficial or otherwise to their body, mind and health and to their progenies. At present they are not free agents. Their environments unnerves them and they yield either to the impositions of their husbands whom they are taught not to refuse or upon the wish or opinion of other female members of her husbands family, who succumbed themselves not knowing what it would bring to them. The law of majority in India puts the age of discretion at 18 years irrespective of sex; and I, for one, do not understand why such a salutary rule should be overlooked in matters which vitally affects the motherhood in India. The first menses, which appears in India, in girls at the age of 13 years generally, may be a sign of puberty but does not prove that the internal organs of girls have become thereby sufficiently matured and developed and fit to bear child—a maturity which they never attain before the 16th year. Maharishi Manu, the great Hindu law giver, no doubt directed the marriage of girls at an age between 8 to 12 years and that of the men between 24 to 32; but he hedged in the consummation with so many limitations, which if scrupulously followed, would have saved many a girl from early motherhood and death. In Assam and Orissa where early marriages are still in vogue, girls are not allowed to stay during night at their husband's house, till they attain puberty. In Bengal, these limitations are not observed and therefore it would not be safe to marry girls at an early age. *Susruta Samhita*, the standard works in Aurveda—in Chapter X directs "when the boy has attained strength give him education according to the varna to which he belongs. Thereafter when his age is 25 marry him with a girl of 12." If the age of the male be less than 25 and that

of the girl be less than 16 years at the time of conception, the *garva* (foetus) dies in the womb ; if born, does not survive and even if it survives, becomes weak in organs. Therefore should not be laying seeds in the womb (*garvadhan*) in the girls of tender age. According to well known interpretation of Hindu Sastras the injunction of Ayurveda which is Veda or Sruti, should prevail upon Manu, which is a Smriti or law. Besides in Bengal, owing to varieties of causes—which will occupy much space and time if discussed here, girls are not married generally before they attain their 15th year and sometimes not earlier than their 18th year. These marriages in contravention of injunctions of Manu are not considered by orthodox Pandits even to be illegal or to rank below the Brahma form of marriage. Where is the harm therefore if the law be made to conform to the custom as now in existence ? Under the circumstances, alluded to above, I would raise the age of consent to 16 years in Sections 375 and 376 of the Indian Penal Code.

3. Crimes of seduction and rape are not frequent in our part of the country. The amendment of law made in 1925 raising the age of consent to 14 years, has, to some extent, succeeded in preventing and reducing the cases outside the marital state and improper seductions of girls for immoral purposes to some extent. But to put an effectual check I would raise the age of consent to 16 years in marital and non-marital cases. Medical science cannot fix, with any degree of certainty, the true age of girls when it ranges between 13 to 14 years ; and in my experience, as lawyer, which extends over a period of 36 years, I have found cases in which false horoscopes were manufactured or false entry in the Register of charitable dispensaries were made, with the object of raising the age of girls to save the offenders from punishment or of lowering it to bring the innocent within the clutches of law. The age of girls at 16 years can be fixed with more certainties with unavailable datas but not so in cases when girl's age ranges between 13 to 14. Escape of offenders will be impossible if the age be raised to 16.

4. It is very difficult to say whether the amendment of 1925 in raising the age of consent within marital state to 13 years been effective in protecting married girls against cohabitation with their husbands. These offences, in most cases do not see the light of day nor the offenders, in such cases, are not brought to book even by the father or the guardian of the girl wronged, to avoid scandal and social displeasure of the family. The spread of education has, to some extent, stopped the early marriage of girls ; but there are other causes which have contributed to increase the marriageable age of girls. The heavy dowries, which now-a-days one has to pay to bridegroom, the collection of which, in generality of cases, requires some time together with the desire on the part of the father or guardian to choose a suitable husband for daughter or ward—a fishing, which requires some times, delays the marriage which in generality of cases cannot take place before 15th and sometimes before the 18th year of the girls.

5. Girls generally attain puberty at 13 year of the age when their first menses appear ; though in some cases appear at 13 to 14 years.

6. It is very difficult to answer this question for there may be cohabitation before first menses and after that. Cases are not rare where girls have given birth to child at 12 years to 13 years.

7. I do not attribute the early consummation of marriage to Sastrie injunctions but to a morbid desire in males to cohabit brought about by causes about which less said is better. The Sastras no doubt, enjoins consummation in the first appearances of menses ; but they pointed out cases under which it may be delayed. Non-consummation at first menses is a technical prospective sin of preventing a birth of a child which equals in kind and degree to sin of father or brother, who cannot marry their daughter or sister before the appearance of the first menses. As girls are now generally married long after the appearance of first and offenders in this respect have to do no penance (*Pryaschitta*) therefore, the non-consummation, if it were sin, it is only a social and not moral or religious sin which can be overlooked.

8. Garvadhan ceremony is so far as I am aware, not performed with some other minor ceremonies—such as simantanugan and others. A ceremony called

'Punarbbibaha' is performed on the 4th day after first mense. But if the husband cannot join the ceremony on the first time it may be delayed for many months—nay a year if auspicious day is not found for solemnisation of the ceremony. Before such ceremony the boy and girl or husband or wife are not allowed to sleep on the same bed during night.

9. No. I do not consider the attainment of puberty is a sufficient indication of physical maturity in girls which justify consummation of marriage. As I have pointed in my answer to question No. 1, the physical maturity comes to girls at 16, I would suggest consummation at the age of 16 and not earlier as such an age will not hurt the female as well as her progeny.

10. I am of opinion that a girl aged 16 in India is competent to give intelligent consent to cohabitation with due realisation of its consequences, if she is sufficiently educated.

11. In my experience which extended over 45 years, I have come across cases in early pregnancy before the 16th year either killed the mother or invalidated her for life—made the progenies weaklings or they died in the womb or soon after their birth. The cases are numerous but I select four typical cases as noted below as illustration :—

Name of the patient.	A.	B.	C.	D.
Age at first menstruate.	11 years 6 months .	13 years. .	13 years. .	10-6 months.
Age at birth of the first child.	12 years 6 months .	14 years .	15th year .	Conception at 11.
No. of children	1. Abortion 2. A still-born child brought out by operation. 3 and 4 died after birth at age of 6 months and 1 year.	1 child dead 2 child died 3, 4, 5th alive. 3 alive suffering from infantile fever, dysentery.	3 children all alive but not healthy.	Dead child. Dead.
Condition of those alive.	None alive.			
Condition of mother .	A bed ridden patient suffering from chronic dysentery, palpitation of heart.	A bed ridden suffering from chronic dysentery, palpitation of heart.	Heavy pain, in the head, palpitation of heart.	Died at birth.
Remarks . . .	4 children, each child was born at interval of 1 year 6 months and the age of the girl mother 18 years.	Aged 20 years, interval of birth 1 year and 6 months.	Aged 21 years, interval of birth 2 years.	

12. Yes. I am strongly of opinion that the early consummation of marriage and early maternity are solely responsible for high rate of maternal and infantile mortality and they are responsible for physical and intellectual deterioration of our race.

13. Yes. Educated classes are in favour of further extension of the age of consent in the marital and extra-marital cases from what is fixed by the Amendment of 1925. Through their influence, the early marriage of girls in classes other than educated have been stopped for we, now-a-days, scarcely find marriages of girls at the age of 8 or below it.

14. Women in our part of the country specially those of old school—to my shame I admit would keep girl wife and her boy or grown up husband together in a room during night since the date of their marriage and would not wait for appearance of first menses. The result of such step is premature conception and birth of child which is fatal to the girl mothers. But those, who had sad personal experience and who are educated, would not allow boy husband, or grown up ones

to lie with girl wife during night. Though there is a religious injunction as to the performance of *Doiragoman* ceremony (arrival of the wife a second time, after the appearance of first menses to her husband house—which she left after marriage ceremony was over and waited at father's house till its appearance) after the appearance of first mense, it is generally performed as a part of the marriage ceremony during her first stay in husband's house in any day which the woman folk of the family may choose. It is never performed, so far as I am aware in the time fixed for its performance.

15. Yes. It is very difficult to ascertain the true age of girls in connection with the offences under Sections 375 and 376 of the Indian Penal Code, as the doctors cannot fix with any degree of certainty the age of girls when it ranges between 13 to 14 years. The difficulty will be over if the age be fixed at 16 years as the signs of development in such an age is unmistakable and can be easily found out.

16. No, difficulties will not be materially reduced or minimised if the age of consent be raised to 14 years; but if it be raised to 16 years, I venture to think the difficulties will be at an end as medical man will be able to fix the age from various unassailable and unerring datas to be found in the body of the girl.

17. I would not separate extra-marital and marital offences into different classes as they fall within the same "connotation." I would provide heavy punishment where the offence is proved; but considering the present state of society, I would inflict a less heavy punishment if the offence is committed within marital relation when accompanied by less brutality.

18. Yes. I would make a difference in procedure in trial when the offence is committed within marital state. I would suggest that such a case should be tried in camera and outside public, except the parties, their witnesses and pleaders, should not be allowed to enter into the court room. I would make the offence cognizable by Presidency Magistrate, District Magistrate and Magistrate of first class, only on the complaint of the girl aggrieved or her father or guardian. I would provide the examination of such girls by lady doctors in her house and her examination as complainant or witness shall be conducted at her residence at the time by the trying magistrate.

19. Safeguards provided in the law are sufficient but I would make provision for payment of compensation of Rs. 500 to Rs. 100 to the aggrieved party in commensurate with his rank and position in life to prevent unnecessary harassment by persons who may be ill advised to take such a step or may be induced at the instance of others and would make such an instigator an abettor and would inflict upon him such punishment as will be meted out to the principal.

20. I would raise the age of consent in marital cases to 16 years and would fix the age of marriage of girls at 16 years. For if there be difference, I am afraid it will open the flood gate of fraud. There is no consensus of opinion among public, the different section think differently according to its light or the hide bound prejudice with which it is saturated.

21. Yes. I want to rely on the strengthening the hands of law, to secure the object in view and I would not wait for the progress of social reform by means of education and social propagandas. There is, no doubt, an upheaval in different sections of society and a desire to improve its condition; but I am sorry to say that there is no selfless leader in different sections educated enough to chalk out the line to be adopted. They or some of them—sometimes take such a step as is not congenial to its growth or foreign to its being and court failures—which sets back the hand of progress for considerable time to come.

I am not unmindful of the evil that may follow if government be allowed to meddle with our social reforms, for it may try, in its eagerness to correct us to put for coat of cold countries upon the back of those who live in torrid zones. The social reform should come from the society itself and not from outside. But in consideration of our present condition—when there is no leader to guide our course of conduct in right line or necessary sanction to enforce what educated intelligentsia of our country consider we should adopt, we have no other alternative left to us

than to ask a foreign government to take such step as some of us may consider to be beneficial step towards improvement. The spread of education will, no doubt, will enlarge our views and but so long as our views are not extended we shall be satisfied with what we receive.

Written Statement of Mrs. SARKAR, Lady Principal, Maharani School, Darjeeling, the 11th August 1928.

I beg to enclose herein answers in reply to the questionnaire prepared by the Committee of the Age of Consent. I deem it an honour that the Committee has desired to know my views on this most vital question. I want to bring to your notice that I am a member of the Brahmo Samaj, and in my childhood has been brought up in a home where the idea of child marriage was never even breathed before me. So I personally know nothing about the evils of child marriage. But I have come to know many evil effects of child marriage by the broadening of experience in life. It is my firm belief that this evil can only be wiped out through legislature.

I am not in a position to give oral evidence before the Committee so I beg to be exempted from doing so.

1. Have no direct information as regards any disaffection with the state of the law as to the age of consent contained in Section 375 and 376 of the Indian Penal Code.

2. I am for making an advance on the present law. In the present state of Indian Society the matter cannot be left to the better judgment and free will of individuals. It is apparent to all that the present law has considerably raised the marriage age even in the orthodox society. It is a common sight to see grown up unmarried girls in Hindu homes.

3. Not authorised to make any assertion since I have no personal experience in such matter.

4. I think the amendment of 1925 has led to the general custom of putting off marriage beyond the age of 13.

5. I believe girls attain puberty in this country not according to age, but differs in different castes, communities and classes of society. Where early marriage prevails it occurs early. The hill girls do not attain puberty by 15 or 16.

6. Here at Darjeeling child marriage is not common among hill people—though the marriage tie is very slack.

7. Those who fight for religious injunctions for the early consummation of marriage before puberty, may distort such injunctions from the Shastras, but Hindu public in general has no such scruples now-a-days. I have never heard of any penalty being meted out to any for such breach of injunctions.

8. The Gaona ceremony is not in vogue in this part of the country.

9. In my opinion attainment of puberty is not a sufficient indication for physical maturity to justify consummation of marriage. From medical point of view this question should be discussed, but common-sense and general observation tend to fix the time at least full three years after the attainment of puberty.

10. Not before a girl has completed her sixteenth years she should be considered competent to give an intelligent consent to cohabitation or to realise the full weight of the consequences.

11. I have personally no such experience as in our society girls are not married before they complete the sixteenth year.

12. I consider early marriage the chief cause for national inefficiency, especially for ill-health and child mortality.

13. There is no public opinion in this matter at this part of the country. The ladies of Darjeeling will meet to-day at the local town hall to express their opinion.

14. Not authorised to answer this question.

15. Do.

16. The age of consent should be raised above 14 years.

17. Cannot answer this question.

18. Do.

19. Do.

20. I consider that penal legislation fixing a higher age of consent for marital cases more effective than legislation fixing the minimum age of marriage.

21. If we are to rely on the progress of social reforms through education and other means then we shall have to wait till we see the nation doomed. We cannot rely upon the moral sense of the illiterate millions. The past history of the land is a lesson to us all. It is through legislature that infanticide, Sati and other evil customs have been put down. In the present state of things penal law is the most efficient means to secure permanent benefit for the nation.

Written Statement, dated the 12th August 1928, of Mr. R. PALCHOU-DHURI, M.L.C., Maheshganj, District Nadia.

1. No.

2.

3. Very rare. Not noticeable.

4. (1) }
 (2) } Probably not.
 (3) }

If not, etc. Educating public opinion.

5. 1st part. 12-13.

2nd part. Not noticeable.

6. (1) No.

(2) Perhaps.

(3) As often as not.

Do any, etc. Very rarely.

7. By ancient practice and custom.

8. Generally not known.

9. No, at least five years.

10. Not before 16.

11. No.

12. Yes.

13. Slight in certain classes.

14. Not before puberty.

15. Not noticeable.

17. Yes.

18. Yes.

19. Educating public opinion.

20. Raising the age of consent.

21. Educating public opinion.

Written Statement, dated the 13th August 1928, of Lady PROTIVA MITTER, Calcutta.

1. Yes, but among the educated and enlightened and more advanced. Among the orthodox there is no desire to alter the law and among the lower and uneducated classes there is no knowledge of the law.

2 (1) Unanswered.

(2) There is distinct case for an advance, even though the benefits may only operate for the present in properly policed areas and amongst enlightened families.

3. (a) Definitely yes. (b) As far as the districts of Eastern Bengal are concerned the law has had absolutely no success in either preventing or reducing rape. (c) Education, beginning with compulsory primary education and the teaching of elementary hygiene.

4. (1) Unanswered.

(2) Public opinion has been stimulated ; but this is due more to social "progress than to the law.

(3) The age of marriage has long been raised among individual progressive people ; but this does not touch the bulk of the population.

The steps we propose are — Education, and health and social propaganda both in and out of schools.

5. From the age of 8 upwards to 12 and 14 among the more enlightened and progressive classes.

6. Unanswered.

7. The orthodox Hindu families and also the illiterate people firmly believe that it is a religious injunction and the priests encourage this belief : and all the early marriage in India is now traceable to this ; but no injunction was in the Shastras.

The penalty for breach relates to the re-birth of the parents.

8. These ceremonies do not belong to Bengal.

9. Puberty covers a period of *years* and the first attainment we do not consider sufficient indication for the consummation of marriage, as physical development is not completed until 3 or 4 years later.

10. From our knowledge of Indian girls we should say at *no* age are they competent to give an intelligent consent ; but it is impossible to generalise.

11. Unanswered.

12. Unanswered.

13. Quite lately ; but not so much due to the amendment of 1925 as to the public interest aroused by Miss Mayo's book and the resentment felt at its publication. Confined to educated classes.

14. Orthodox Hindus in this part of the country still cleave to early marriage although the more enlightened and progressive classes of the community are putting the age of marriage later and later.

15. The chief difficulty in determining the age of a girl is the examination for ascertaining her age : and for this reason we would urge the employment of women doctors for all cases of girls coming before the courts in relation to these and kindred sections in this and other acts.

16. It is easier at 14 than 13 years of age ; but the margin of error is considerably minimised as the age advances.

17. We do separate them. The nature of punishment under the Act seems sufficient.

18. No, except that all cases of this nature should be held in camera.

19. Unanswered.

20. We cannot control the age of consent within the marital bond ; but if the minimum age of marriage is raised we consider that would be the effective method of controlling the situation. We also consider that, of the two alternatives, the one we have named would be in consonance with public opinion in our part of the country.

21. Social reform by means of education and social propaganda.

Written Statement, dated the 16th August 1928, of S. C. GHOSH, Esq., B.L., Retired District and Sessions Judge, Bengal, Calcutta.

1. The Age of Consent Act has not been looked upon with favour, except by the literate and the men of advanced liberal ideas. It's obnoxiousness lies in the prosecution under the Act. It is then resented.

2. The guardians of the house feel extreme delicacy in not allowing the young couples to meet for conversation at least. In Bengal society, whether Hindu or Mahomedan, according to long existing custom, they can not, and do not, meet in the presence of others, except very young children. In Christian society it may be otherwise. As now-a-days grown up boys of, say 18 to 22 generally become husbands, it is not very easy to control such meetings decently. Consequently further advance in the age of consent is not desirable.

3. I have had to serve in the Judicial Service in Dacca, Mymensing, Barisal, Khulna, Jessore, Malda, 24-Parganas and Howrah Districts and my home is in the Hugly District where I practised as a pleader. My experience was that abduction, seduction and rape are most frequent in East Bengal, and the culprits are generally young Mahomedans, without much education.

4. Consideration for unmarried girl's future prospect of marriage, cases of indecency are not generally brought to Court for fear of publicity, specially in Hindu society, and to a large extent also in Mahomedan society. Cases of rape under the Age of Consent Act were rarely heard ; it is never brought to Court except where over-zeal or family feud is at the bottom. I have heard of one such case.

As marriage takes place in most cases both amongst Hindus and amongst Mahomedans before puberty, cases of abduction, seduction or rape are seldom heard of before marriage, except generally where girls are stolen for other purposes.

According to custom consummation both amongst Hindus as well as amongst Mahomedans take place after puberty after marriage. It is safer to stimulate public opinion by literature, than by putting off marriage after a certain age.

Consummation of marriage may be possibly postponed in the case of Brahmos, Christians and Mahomedans ; but amongst Hindus the sanction of the Dharma Shastras to it on the 1st menstruation after marriage is a stupendous obstacle, which can not be removed without wounding religious feeling.

Marriage is some protection against the attacks of the wicked, as the law gives greater protection to married girls, and with the Hindus the Dharma Sastras create grave sins and stringent expiations.

Amongst Hindus the rule of Dharma Sastras is that all girls are to be given in marriage before puberty, and it is meritorious to give them in marriage before 10, say in the 8th or 9th year. But after puberty according to such rule the girl becomes *Shayambar* and then she may elect to marry any one she likes. It is fortunate that even now with advanced ideas, no such election has taken place—to my knowledge at least. Such election may strike at the root of the rule of the Dharma Sastras that a girl is to be given in marriage to a boy of a learned and respectable family. As society stands, a respectable Mahomedan will not marry his girl to any who is not of an equally respectable family or of greater respectability ; so also a Hindu. Moreover a *Kulin* Hindu generally feels delicacy in giving his daughter in marriage to a non-*kulin*. If the right to elect is exercised a Hindu

girl may give herself in marriage. Thus election may revolutionize society. Even amongst the advanced Brahmos, such election rarely takes place.

Amongst illiterate classes of all Hindu castes marriage takes place at an early age. It is due to paucity of girls or boys, and to economic conditions. It will be unwise to limit the age of marriage. The revolution that has already commenced by education on western lines, but devoid of religious element, though slow is having its effect amongst the educated people of all castes to spontaneously raise the age of marriage.

5. The matter is delicate, as the conditions of cold countries are not the same as in hot countries like the major portion of India.

According to Taylor's Medical Jurisprudence (Vol. 2, p. 300, ed. 1873) menstrual function is commonly established in females in the climate of England between the ages of 14 and 16—but in the smallest numbers at 12 and 13 and in the largest numbers between the ages of 16 to 18.

According to Dr. Chevers, women in India begin to menstruate after the 12th year or at the beginning of the 13th; menstruation at 10 years is very uncommon; it is rarely delayed beyond the 13th year.

I have known of 2 cases at the 8th or 9th year, and of 2 cases, before the Age of Consent Act, in which healthy child was born in the 11th or 12th year.

Dr. Taylor says so soon as this function is established, a woman may be considered to have acquired procreative power; but a female may conceive before the function has commenced.

People who visit the cold countries are sometimes misled by the healthy appearance of the girls of over 14 or 16 there who have not become mothers yet.

It is sometimes said that the Christian community of India are married at a later age and why should the purely Indian girls be taken as exceptions. I have heard of a state of society in some cases which it is better not to describe. In India Christian girls—specially "Native" or "Indian" do menstruate early and they like their pure Indian sisters are alike liable to the attractions of nature. All are equally liable to early conception.

Then there are the conditions of life amongst the different communities, and the social rules, which are specially strict in the case of Hindus. If a Hindu girl conceives before marriage, and the fact gets publicity, she loses all chance of any marriage in even the least respectable family; though this may not be so in the Brahmo community.

Then the environments of life in the villages are different from those in the towns, and specially in a town like Calcutta.

In Calcutta every house with 1 or 2 exits is like a fort, with exceptions in cases of access by the too close or adjoining roofs. I have heard of misuse of such adjoining roofs. Calcutta life of girls in some cases are some times on the verges of decent life. Here there is chance of incest and misuse of roofs; but in the villages, the gardens and shaded or screened places such as jungles have been sometimes the places for elopment, or abduction or seduction by deceitful means or by force. It is not unoften that solitary young girls found in such places attending to call of nature (as no privies exist) were forcibly taken away. In East Bengal a fair-looking girl's life in a poor Mahammedan family is rendered miserable; and in a poor Hindu family, any young girl so placed is open to the prey of the wicked. Such places have furnished occasions for overtures or enticements, or use of force by gagging.

So it is necessary to save the girls as far as possible by rather earlier marriage. Marriage furnishes some shelter the degree of shelter varies with the strength of the husband's family and education, and the stringency of the law for the protection of married life.

Want of religious education both at school and now at home, has retarded formation of character in both the sexes. Religious life of even a house-holder was some protection but, such life is gradually growing low in Bengal at least.

Then there is the growth of the craze for throwing up of the *parda* and the *veil*. There are prospects of good as well as of evil from it. But the latter is likely to be stronger, as our people, specially the young men, have not formed characters, and on the other hand are much liable to emotions.

An Indian girl has not the same protection from the public as an European girl, in case of distress, nor even approaching it.

Until character is formed and there is strong attempt for formation of character, by the educational authorities and at home, girls ought to be protected by marriage rather earlier, say between the ages of 10 to 12, and the age of consent should not be raised above 12.

As a matter of fact in educated society age of marriage for girls have gone up, owing to difficult pecuniary condition of the girl's father or guardian, as well as for the demand for educated bride grooms, and the economic condition of the country.

6. The matter is already dealt with incidentally.

7. The authorities are quoted by the Pandits of Bengal ; so I desist from quoting them.

8. *Gorbhádhan* ceremony is performed in all Hindu families of any position in society when in particular the mother-in-law of the girl is alive ; where she is dead, the other members are generally apathetic. In respectable old families it is not generally omitted. It takes place just after the first menstruation after marriage, and not at a later stage.

9. Where the girl is not in strong health, child-birth when not yet 14 may affect health of both the child and of the girl ; but I have known of two healthy men who were born when their mother was only 11 and long before the Age of Consent Act. Modern life and several kinds of epidemic diseases are now affecting health. The remedy in such cases is not marriage age or age of child-birth, but birth control, and taking steps to prevent the diseases and modern artificial town life without some sort of physical exercise, and religious education at home. In villages, where there is no malaria, girls keep better health, they get sufficient exercises in home life, in helping her mother in housewife's business. These are wanting in modern town life.

Practice in religious rites of any form has a sober influence. This is now being forgotten.

As to effect of puberty I have quoted the opinion of Dr. Taylor.

10. At 14 or so. But girls are precocious ; and all are subject to emotion. Where free or willing consent is given, the element of emotion takes away the power of reasoning to realize the consequences. State of society is such that in the company of the elders the girls before puberty come to understand the consequences of marriage.

11. I have heard of some such cases, but do not know the consequences. In one case at 10 or 11 I heard of bleeding, but no further.

12. I think want of physical work in home life now-a-days, want of sufficient and timely food including milk and the prevalence of diseases and malaria are vitally affecting the health of both the sexes.

In towns the health of the young husband is the main cause ; besides their proneness to abuses and lascivious thoughts. Of course there are many exceptions.

13. Owing to difficulty now-a-days to earn livelihood, educated young men are in many cases unwilling to marry early. Moreover as joint families are going out, young men want to earn first, then to marry a grown up girl. Amongst them girls are generally married at 14 to 18. But the illiterate or slightly educated people do not entertain these ideas, specially the trading and artizan or labourer classes.

14. No ; except in families which are wanting in male child.

15. I have not had to deal with any such case. I have heard of one such prosecution, but know no details. More stringent law is not desirable.

16. I think it would be unwise to increase the Age of Consent for such a purpose.

17. I would suggest that marital offences be made less heinous or more mild; and the age that will be given by the ladies should be given greater weight. The punishment may be limited to the time that the girl would take to attain her age of consent.

18. The trial may be held in camera and with the help of men of his nationality.

19. The offence is so rare that it is better not to meddle in the matter. Both the apprehensions are unavoidable. It is difficult to find an honest man with formed character to be beyond all suspicion.

20. Both the suggestions are unacceptable to the people.

21. I would suggest as remedy spontaneous social reform and education with a religious element, and practice of religion in some form at home.

**Written Statement, dated the 10th September 1928, of Mr. N. C. GHOSH,
25, Hurrish Mukherjee Road, Bhowanipore, Calcutta.**

1. No.

The law has not been in force for even 3 years. What could have happened during this short period to necessitate so early an alteration in the law?

2. (1) The present law should be retained, because the matter was fully discussed when the present law was enacted in 1925. (See the opinions submitted to the Government at the time.)

(2) No advance in the law is necessary.

3. No.

No.

Leave the law to be enforced by the authorities.

4. The amendment has had no effect on the social life of the people.

(1) Economic circumstances, broadening of the outlook of life due to education, foreign travel and study are raising the age of marriage in Bengal—and not by legislation fathered by so-called social legislators.

The masses are also trying to imitate the respectable classes.

The progress is naturally slow.

(2) None. One sees a ripple in the papers.

(3) The law will not put it off.

Economic circumstances are doing so.

Go to the villages and you will still find girls between the ages of 7 and 10 getting married.

5. 11 to 13 years. In some cases 10 years even. Very difficult question to answer.

It may vary according to the climate, the health of the girl and conditions of life.

6. (1) No.

(2) Yes.

(3) In occasional cases—after puberty.

No. Very rarely.

7. Yes—after puberty.

(See Treatise on Hindu law. And also Manu, Yajnavalkya, Parasara, etc.)

8. No.

It is prevalent, however, in certain parts of the country.

It has died out practically among respectable people.

In Bengal the ceremony coincides with puberty, after marriage.

9. Yes, in the majority of cases.

It depends on circumstances, *e.g.*, health of the girl, climate, food taken, financial position of the parents or guardians, bringing up, environment, etc.

10. In some cases, even after 10 years, if the girl is healthy and well-nourished and is brought up in a good atmosphere and among elderly people.

It is a very difficult question to answer.

The marriageable age in Bengal has certainly risen among respectable classes.

11. I have heard of none.

12. Certainly not.

Insanitation, poverty, malnutrition, economic causes, disease (rampant throughout the country throughout the year), etc., are responsible for the low vitality of the people.

(Please see statistics of disease and mortality in India.)

13. No.

Public opinion is resentful of interference with long-standing customs and practices supposed to be sanctioned by religion.

I may add that the masses in the interior and in the villages know nothing about the law. I say this after making personal enquiry.

14. Not among respectable classes.

But consummation is desired after puberty among many people both in the towns and in the country—for various reasons.

15. Very few cases come into court.

It is sometimes very difficult to gauge the ages of girls.

The only suggestion is compulsory registration of birth.

But what about the interior in the villages? It would be a very difficult law to administer as it may act harshly on poor and illiterate people.

17. Yes.

The state should not prosecute a husband if he cohabits say with a girl-wife of 12 or about 13 years who has attained puberty. Such prosecutions would be attended with disastrous consequences to the families concerned.

A heavy punishment would be no deterrent. The offence might have been committed under peculiar circumstances.

It is monstrous that a Hindu married man should be liable to transportation for life by an alien judge ignorant of the customs and manners of the people just because he happens to have marital intercourse with his own wife aged 11 years 11 months and 29 days, who may be fully developed and have attained puberty and be able to bear marital intercourse—the husband not knowing the exact age of the girl who may look like 14 or 15 years of age.

Suppose such a sentence is passed on the husband, what would be the position of the girl-wife—practically a widow for life, and if poor, without means of livelihood?

Will the state be responsible if the girl wife goes astray under the circumstances.

18. Offences in the marital state should be conducted in strict privacy in camera so that the names of the party may not transpire, for their reputation and social position may be affected, except in cases where it ends in the death of the girl.

The future of the girl and the family reputation have to be considered.

In the case of extra-marital relations, the case should also be conducted in privacy if the girl is respectable or if it is so desired by the parties.

19. No.

20. No.

Public opinion is strongly against taxing the minimum age of marriage.

I presume parents are usually more concerned over the welfare of their children than meddling legislators.

In some cases it may be necessary for the parent to get the girl (daughter) married before he or she dies.

One has to consider circumstances in India—social, moral and political.

In my opinion the law should stand as it is. One has to take into consideration that these laws are not passed by a legislature which is really representative of the country.

India is a continent consisting of different types of people, with different temperaments, castes, customs, habits, etc.

21. I rely on education and social propaganda, which have not yet reached the masses at all (I read in the papers a few days ago that in the Central Provinces there is almost cent. per cent. illiteracy among females).

In Bengal education and economic circumstances have unwillingly raised the age of marriage beyond comprehension among respectable classes and certain castes.

The strengthening of the penal laws might react on Indian society, and it might even result in incest.

**Written Statement, dated the 9th August 1928, of Dr. N. H. BLAIR,
L.S.A. (London), Mall Villa, 3, Darjeeling.**

1. In my opinion there is.

2. (1) I can find no justification.

(2) There are many *viz.*—

(a) The girl will be more mentally capable of comprehending the nature of the act of sexual intercourse and its consequences if she is 16.

(b) The danger of spreading venereal disease among very young girls will be lessened.

(c) If conception occurs as a result of the act the child will be more healthy.

3. In this district they are infrequent. The law of 1925 raising the age of consent to 14 years seems to have made little or no effect in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. But the cases are so few, only about 3 a year on an average for each offence—that are brought to the notice of the police; that it is scarcely possible to draw any inferences. I am sorry that I am not able to propose any measures to make the law effective.

4. In my opinion the amendment of 1925 raising the age of consent has had no effect.

(1) In postponing the consummation of marriage.

(2) But has stimulated public opinion in that direction to a large extent.

(3) But has not put off marriage beyond 13. Marriage however has been postponed to 14 and over during the last 3 years. The steps I should take to make it effective would be to penalize marriage of girls under 14.

5. Among the Bengalis between 12 and 13.

Among the hill peoples between 14 and 15. In both races the age of attainment of puberty seems to be lower in the poorer and uneducated classes of society, higher in the more wealthy and educated.

6. Among Bengalis cohabitation is not common before--

(1) puberty and in the hill peoples practically never occurs.

(2) It occurs usually soon after puberty in both races.

(3) Among the Bengalis it often occurs before the girl completes 13 years.

Among the hill peoples practically never. I have not heard of their doing so.

7. I do not attribute this practice to religious injunction. I think it started many centuries ago, when this country was continually in a state of being attacked, for the protection of young girls. The custom has been now crystallized into a tradition which is sanctioned by society and the penalty of setting aside this practice, namely that of being outcasted from society, is a penalty which very few care to incur especially if they are poor.

8. I have never heard of this ceremony being performed in modern times.

9. I do not consider the attainment of puberty is sufficient indication of physical maturity to justify consummation of marriage. This is shewn by the number of premature deaths of both mother and child in such cases deaths do not occur by the ill health of both.

I consider that the age of 18 is the very lowest possible to justify such consummation without injury to the health of the girl and that of her progeny.

10. In my experience she is not capable of doing so until she is 18.

11. There are so many cases of this kind that it is difficult to make a selection for the purposes of this paper and they occur among Bengali and Hill girls alike, e.g. a girl at 12-8/12 years suffered from labour pains for 7 days.

12. A girl died in labour when 11-10/12 years of age.

A girl at 12-6/12 years had to have the baby decapitated and was herself in great danger of her life for several days.

A girl at 12 had the pymen so severely ruptured as a result of connection that she would have bled to death had not help been instantly procurable. Many cases of osteo malacia have occurred on girls under the age of 13 as a result of marriage followed by the birth of a child.

12. It will be seen from the foregoing that I consider it responsible for high maternal and infantile mortality for the general low standard of health that obtains in Bengal causing its people to fall victims to malaria, cholera and other epidemic diseases, for the general want of vigour and the lack of resisting power to adverse conditions which is so characteristic of the peoples of this country, for the low average physical and mental of the inhabitants of India as a whole.

13. There is a decided development of public opinion in this respect but it seems to me that it is not general but confined to the educated classes of people.

14. I regret to say they do because (1) of their fear of society, (2) a larger dowry is required by the bridegroom's people if girls are not married early and this presses heavily on the people if they are poor. But this mainly prevails among the uneducated classes of the community.

15. Great difficulties have been experienced and the question has to be decided by medical experts and time has not been given me to consult them in connection with the cases occurring in this district. I can suggest no measures to remove or minimise the difficulties.

16. There is no doubt that it would.

17. Certainly I would.

I could not suggest punishment in a paper of this kind. It seems to me it would depend on the circumstances of each case.

18. I would certainly make a difference, but am not competent to suggest any procedure.

19. I am strongly of the opinion that additional safeguards should be made beyond those existing at present, but cannot suggest that these should be.

20. I consider that legislation fixing the minimum age of marriage is likely to be more effective than the other. I gather that this is in consonance with public opinion in this part of the country.

21. I would rely mainly on the strengthening of the penal law to secure the object in view. But I would also advocate most strongly education and social propaganda as means of bringing about the progress of social reform.

**Written Statement, dated the 11th August 1928, of Mr. S. K. HALDER,
I.C.S., Sub-Divisional Officer, Tamruk.**

1. In some places amongst the uneducated and half-educated classes there is dissatisfaction with the state of law as to the Age of Consent as contained in sections 375 and 376, I. P. C. They seem to think that marriage and consummation of marriage are religious ceremonies but the state should interfere in these matters as the well being of society is concerned.

2. I would suggest making an advance on the present law for these reasons :—

(a) The present age of 13 years still stands in the way of physical development of girls.

(g) The advance would not affect the society generally, for the age of marriage has now considerably increased and still rising gradually for various reasons such as educational advancement, economic conditions, reluctance on the part of youngmen to marry till they are settled in life and non-adherence of guardians to old custom virtually affecting the interest of the society.

(c) According to the local customs of many people, though a marriage may take place at a very early date, consummation is not allowed till after puberty which comes generally in the age of 14 or 15.

3. Crimes of seduction or rape are rather frequent in this part of the country and particularly in the northern and eastern Bengal districts and the amendment in the law made in 1925 raising the age of consent 14 years has not succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. In order to make the law more effective I would propose more deterrent punishment in the case of girls below 16 years. I would also propose the formation of village defence parties, where these do not exist, who should act in co-operation with the local police, to prevent these crimes with the best of their efforts, and members of such parties doing useful work should receive encouragement from Government in the shape of rewards, etc.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years appears to have been effective to some extent. I think the best way to make the amendment effective is to urge members of the Panchaiat or Union Boards to keep a watchful eye over all families and to see that girl wives are not exposed to their husbands before the age of consent.

5. 12 to 15 years generally. Yes.

6. (1) Yes, in few instances, amongst the lower classes of society.

(2) Rather common. The customs of the country encourage such cohabitation.

(3) Yes, but not very common and until after attaining puberty.

These cases do not come to court generally.

7. Early consummation of marriage just at or soon after and not before puberty (indicated by menstruation), can generally be attributed to religious injunctions, some of which are quoted and translated (*vide* below). The penalties for breach of those injunctions are only religious or social.

(a) Manusanhita, Chap. III, Sloka 45.

ऋतुकाक्षभिगामी स्यात् स्वदार निरतः सदा

One must cohabit with his own wife at menses.

(b) Parashar :—

ऋतौ ज्ञानान्तु यो भार्यां सन्निधौ नोपगच्छति ।

धीरायां भूणहत्यायां भुज्यते नात्र संशयः ॥

One who does not cohabit with his wife, having her bath after her menses, when she is near, doubtless commit the sin of killing foetus.

(c) Vyasa :—

भूणहत्यामवाप्नोति ऋतौ भार्या परामुख

One who takes his face away from his wife at menses is guilty of destruction of Foetus. Punishments are laid down in the Sastras.

8. 'Gaona' or 'Garbhadhan' ceremony is usually performed in this part of the presidency. It generally coincides with the consummation of marriage. It cannot be anterior to consummation, which is a part of the ceremony itself.

It is generally performed soon after the attainment of puberty. There may be some delay owing to inauspicious days and other unavoidable causes.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I consider that the girl should be at least 16 years old and therefore some time must necessarily lapse after the attainment of puberty in order to be of physical maturity to justify consummation of marriage.

10. At least 16 years.

11. There are various instances of girls becoming mothers in their 13th or 14th years and she gets 3 or 4 children within her 18th or 20th year and by that time life is a burden to her. The children of these mothers are sickly and child mortality is rather too frequent in such cases. It has been calculated that every year some 2 millions Indian babies die. Birth registration is still casual to afford precise data. But it may be stated with confidence that one in six or perhaps even in five of the infants born in India perishes within the first year of life and in most cases it leaves behind a mother ruined in health, devoid of solace and disappointed for life.

12. Yes.

13. Yes. This is generally confined to the educated and advanced classes of society.

14. There are women who are in favour of early consummation of marriage for their children while there are others who do not like their girls to become mothers at an early age. The number of the former class is getting rather few.

15. Yes. Compulsory birth registration.

16. Yes, to some extent.

17. Yes. The punishment prescribed in the existing law seems to be sufficient for each class of offences.

18. I do not think any change necessary in the existing procedure of trials. For offences within the marital state I would suggest that provisions be made

for securing privacy of such trials in as much as it is improper that private family matters should be exposed to the ears of public. I may state as a parallel case the restrictions imposed by Government on newspapers in reporting divorce proceedings.

19. No. There are sufficient provisions in the law for false prosecutions.

20. I think a legislation fixing the minimum age of marriage would be more effective than penal legislation fixing a higher age of consent and the former will be more consonant with the public opinion in my part of the country. But personally I am of opinion that there should be penal legislation fixing higher age of consent side by side with a legislation fixing the minimum age of marriage and these will in my opinion strengthen each other. Offences against the legislation banning early marriage can be proved more easily—and if by legislation early marriages are checked the chances of early cohabitation within the marital state will be as a matter of course considerably reduced.

21. Social reform by means of education and social propaganda is necessary at slow progress first because there are not many reformers and secondly because the field is vast. Social reform by means of education and social propaganda cannot be undertaken by Government but must be left to private individuals. To leave a thing to social reformers often becomes an excuse for Governmental inactivity and lassitude. Besides, the most abiding blessings for which the Indian Society is indebted to British rule—the abolition of Satee, the legislation of widow marriage, etc.—are due mainly to Government legislation and not social reform by education and propaganda alone. In these cases Government espoused the cause of an advanced section of the Indian Society, the society of forward men like Raja Ram Mohan Ray and Pandit Iswar Chandra Vidyasagore. In the present case also Government should in my opinion, take bold positive steps as in the past and not leave the thing in the hands of the masses. Social reform takes a long time, but in the interval the best interests of society must not suffer.

**Written Statement, dated the 10th August 1928, of Rai Bahadur
PANCHANON MAJUMDAR, B.L., Chairman, District Board, Malda.**

1. I cannot say that there is any widespread dissatisfaction but those who are liberal and advanced in their ideas express such dissatisfaction. I myself am strongly in favour of an amendment of the law on the lines indicated in the proposal under consideration and am ready to be examined orally if necessary. I think the age of consent should be 14 in marital and 16 in non-marital cases.

2. The circumstances which in my opinion justify the making of an advance on the present law are, amongst others, the following:—

- (1) The health of the child mothers deteriorate from premature pregnancy and child-birth.
- (2) The off-spring of premature pregnancy are often weak physically as well as mentally.
- (3) The females become mothers at a very young age when they are not fitted physically and intellectually to discharge the duties of mothers.
- (4) The birth of too many children at a comparatively young age often causes pecuniary hardship on the young father and on the family.

3. Not very frequent.

I do not think that the raising of the age of consent has effectively prevented cases of rape. It may have reduced such cases to some extent.

I would advocate that the age of consent should be still further raised.

4. I think it has had some effect in protecting married girls against cohabitation with husbands within the prescribed age limit by stimulating public opinion in that direction. The steps that I would suggest are :—

- (1) Propaganda work by social reformers,
- (2) Rousing female conscience of the country by educating them properly.

5. I think that an average girl of normal health attains puberty between the ages of 13 and 14. Those girls who are better nourished attain puberty at an earlier age than others.

6. I cannot give any useful information. Such cases do not come to court.

7. I do not. There is, however, a belief among some people that the husband should cohabit with a wife on menstruation. The religious sanction for such a practice is gradually losing its force.

8. I have no knowledge.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I am not a medical man and I cannot give any definite opinion on this part of the question and in my opinion no generalisation can be made on a point like this. I should think that 1½ to 2 years after puberty can be taken to be the age justifying consummation of marriage.

10. Not before she has completed her sixteenth year.

11. In my experience as a lawyer I have come across cases in which forcible cohabitation with a girl at a tender age resulted in injuries to her body but I can't say if the injuries caused any permanent disablement.

12. I certainly do.

13. Public opinion has not developed generally but such development is confined to advanced thinkers only.

14. I can't say they favour, but they are powerless to prevent it if the husband of the girl-wife is insistent. Among females also the opinion is gradually developing that the consummation of marriage should be put off to a reasonable age.

15. Yes. To place the law and system of birth registration on a more satisfactory basis.

16. I can't say, medical men will be better able to answer the question.

17 and 18. I would leave the law as it is.

19. I would have been very glad if I could make any useful suggestion for ensuring the punishment of the offender but I am sorry I can not make any.

20. I think that legislation fixing the minimum age of marriage is likely to be more effective. Public opinion, I regret to say, is in favour of neither, but that must not stand in the way of the proposed legislation. I am strongly of opinion that both the measures should be passed into law.

21. Let social reform do its work but I would certainly prefer the enactment of penal legislation to hasten the attainment of the object in view.

Written Statement, dated the 11th August 1928, of Mr. B. B. ROY,
Chairman, District Board, Midnapore.

1. No, no expression of dissatisfaction is visible here. Because the educated public is not dissatisfied and almost the whole of illiterate mass and great majority of people with little learning do not know the existence of Age of Consent as contained in sections 375 and 376.

2. Retaining the present law of the Age of Consent is justified on the following circumstances, viz. :—

(a) Illiteracy of the major portion of present population.

(b) Child marriage system still prevalent amongst the majority of population.

3. No, the crimes are not frequent and therefore the last amendment of 1925 has got no testing application.

4. The amendment of 1925 raising the Age of Consent within marital stage to 13 years has effect, if any, by stimulating public opinion in that direction only. But this public includes only educated class.

I suggest that to make it effective propaganda amongst the mass and penal legislation prescribing marital age limit will be effective.

5. Between the age of 13 and 14 generally the girls in this part of the country attain puberty. There is no appreciable difference of this age of puberty in different castes or communities.

6. Cohabitation is common soon after puberty. It is not common in other 2 cases, viz. (1) and (3).

7. The practice of early consummation just after puberty is to some extent due to religious injunction. The authority of such injunction is Smriti and custom. There is no social or monetary penalty for its breach.

8. "Garbhadan" ceremony in some shape or form is usually performed here after attainment of puberty and it is generally performed anterior to consummation of marriage.

9. I consider the attainment of puberty is to some extent indication of physical maturity or development to justify consummation of marriage. But as there is chance of conception at consummation early conception is injurious both to her health and progeny—whereas simple consummation without conception is not injurious to her health, rather it is conducive to health. After age of 15 she may be considered well developed for consummation without injury.

10. After 15 years of age.

11. Cohabitation before puberty accelerates puberty and is injurious to health. Consummation with consequential conception before full physical development is generally injurious to the health of the girl as well as to her progeny. My experience is that conception before the completion of 14th year brings the above result.

12. Early maternity and not early consummation is to some extent responsible for high maternal and infantile mortality. But early maternity and want of proper nutrition is to great extent responsible for intellectual and physical deterioration of the people.

13. As far as I know there is no development of public opinion in favour of extension of the age of consent since the amendment of 1925.

14. Women generally favour early consummation of marriage after puberty.

15. I don't know anything.

16. No, raising of age of consent to 14 would not minimise or reduce.

17. Yes, marital and extra-marital offences should be separated and I propose maximum punishment for extra-marital to be five years and for marital 6 months.

18. Offences within marital state should be hailable and compoundable. Because mending of human frailties should have a chance of peaceful means.

19. No answer.

20. I consider fixing of minimum age of marriage would be more effective than fixing higher age of consent. Amongst the educated public fixing of minimum age of marriage is in consonance with public opinion.

21. I prefer the progress of social reform by means of education and propaganda as good means of securing the object in view. Because in the present state of society bad results of early marriage and early maternity is not well understood and there may be great tendency (which I consider reasonable) of protecting offenders within marital state.

Written Statement, dated the 23rd August 1928, of Babu BAISSAB CHARAN DASS, Chairman, English Bazar Municipality.

1. There is no dissatisfaction with the state of the law as to the age of consent as contained to sections 375 and 376 I. P. C. as the provisions of the said sections do not affect practically the crimes relating to the Age of Consent. People do not come to court with regard to these crimes until and unless the wife is of so tender years and the injury is so grievous as to compel the parties to come to the court. So the public has not had any occasion for expressing their dissatisfaction. But the public, more practically the advanced section of the public, are for raising the Age of Consent.

2. The present law is almost nugatory; so not only there should be an advancement on the present law by raising the Age of Consent but means should be devised for prohibiting crimes under the Age of Consent.

3. Rape is not frequent, but cases of seduction occur now and then, though not frequently. The amendment of 1925 has not succeeded in preventing or reducing cases of rape outside the marital state. There is great difficulty in proving the age and the accused often escapes on that account so the Age of Consent as fixed by the amendment should be further raised.

4. Within the marital state the age limit is practically nugatory. The reason has been given in answer to question 1; people are very unwilling to come to the court with such crimes within the marital state. It has not postponed the consummation of marriage. It may be remarked that the public opinion has been stimulated against child marriage. But how far by the amendment of 1925 it is very difficult to gauge. The said amendment has not put off marriage; to make it effective marriage with girls below the age of fourteen should be prohibited. But there is grave risk in that also, it may stimulate Goondas in abducting and committing rapes. So the punishment for such crimes should be made a prohibitive point of view.

5. Girls generally attain puberty from the age 12. People in affluent circumstances and if the health of the girl has not been undermined by serious illness, diseased girls attain puberty at the age of 12. The girls of working classes do not attain puberty before thirteen.

6. Cohabitation is common soon after puberty. No such cases even come to the court.

7. There is no religious injunction for consummation of marriage before or at puberty. In consummation of marriage people do not care about any religious injunction, if any. So consummation of marriage before or at puberty is not attributable to any religious injunction.

8. In Bengal, especially here in Malda, there is no gaona ceremony amongst Bengalees. No Garbhadan ceremony is also performed here.

9. The attainment of puberty is not a sufficient indication for physical maturity. Child marriage being prevalent in this part of the country, the child wife coming in contact with aged girls of the husbands family, i.e., girls who have sufficiently attained puberty and taking part in conversation, gossips or jokes regarding marital topics, attain puberty soon after marriage, that is sooner than by the time they would have attained puberty if they were not married. So puberty is not a sufficient index for physical maturity. If physical fitness, the health of the mother and the progeny are taken into consideration, I would suggest the age of 18 as the minimum age for justifying consummation.

10. Between eighteen and twenty girls in India are competent to give an intelligent consent to cohabitation with a due realisation of the consequences.

11. I have come across innumerable cases of premature motherhood resulting in injury to the health of the mother, the progeny. This premature motherhood is due to co-habitation before full physical development. As this evil consequence is seen in almost 75 p. c. of cases of child marriage or marriage before full physical

development, it is not practically possible to give details. But this will be evident if the health of the mothers below eighteen are examined.

12. Early consummation and early maternity vitally affects the intellectual and physical progress of the people.

13. There has been development of public opinion in the sense that considerate people, and their number is daily increasing barring few irrational orthodox heads, are looking down upon child marriage more and more intensely than they did before.

14. Women as a general rule do not favour early consummation of marriage for their children. But after marriage they seldom oppose consummation being afraid of displeasing the husband of the girl-wife.

15. Yes, there are grave practical difficulties in determining the Age in Connection with offences under 375 and 376 I. P. C. I would suggest that the determination of age by an expert free of cost and conclusive unless not rebutted by another expert of similar qualifications should be procured.

16. This difficulty or margin of error will be minimised, if the age of consent is raised to 14 years.

17. Extra-marital offences—the punishment should be separated from marital offences. For the nature and amount of maximum punishment. I do not like to make any suggestion as this will require detailed considerations.

18. I do not suggest any difference in the procedure of trials.

19. I do not suggest any safeguards.

20. Penal legislation for the Age of Consent can never be more effective than legislation for fixing minimum age of marriage. The latter would be more in consonance with public opinion.

21. Social reform by means of education and social propaganda has already done their work and prepared the ground. But as people has been very loath to follow into practice this social ideal, legislation is absolutely necessary to prevent the present evil. Social reform may be fruitful after a long time that will elapse in the meantime will do immense harm to thousands of citizens.

Written Statement, dated the 10th August 1928, of Mr. KUNJA LAL GHOSH, Deputy Magistrate, and Deputy Collector, Darjeeling.

1. I don't know of any such dissatisfaction. In fact people seem to be in different about it. Had it not been for the Bills introduced into the Legislative Assembly I think there would have been no agitation over the matter.

2. In my humble opinion the Law of the Age of Consent should be done away with altogether and Mr. Sarda's Bill, fixing the minimum age of marriage (14 for girls and 18 for boys) should be passed.

3. Crimes of seduction or rape are more or less frequent in some districts in Bengal—notably in Mymensingh district among Muhammadans. I don't think the amendment of the law made in 1925 has improved matters. Rogues care little for the niceties or penalties of law. Human nature being what it is, no stringency in Legislation can cure it. So the law may be left as it is.

4. The law relative to Age of Consent is more or less a dead letter. I don't think it has had the effect intended by the framers of the law. Among the middle class *Bhadralogs* of Bengal, (and I am one of that class) public opinion in the direction indicated in clause 3 of this question has been stimulated by a variety of causes, chiefly by education. The Dowry system in the case of poor *Bhadralogs* and the difficulty in finding suitable bridegrooms in the case of the richer ones have also contributed to the raising of the marriageable age. Cases of violation of the Age of Consent Law are seldom brought to light. I don't know of any such case. As stated in (2) above I would do away with Age of Consent Law altogether.

5. Girls generally attain puberty between the ages of 13 and 14. I think it does differ among different classes of society. Girls of the upper classes, brought up in luxury, attain puberty earlier.

6. Among the middle class *Bhadralogs*, marriages seldom take place now-a-days before 14 (i.e., after the age of puberty) and cohabitation begins soon after puberty. Even if cohabitation takes place before 13, no case comes to court.

7. No, not now-a-days. The Hindu shastras enjoined early marriage but not consummation. This was not altogether without a meaning. The joint family system was then largely in vogue and the idea was that if a girl was introduced into the family at an early age, she could be taught to adopt herself to the environments under the guidance and control of the matrons and there was less possibility of a disruption in the family. The sanction of religion has now lost its force.

8. In my part of the country a ceremony known as second marriage (probably the same as Garbhadan) is performed after the married girls attain puberty. It usually coincides with the consummation of marriage, though sometimes it is anterior to consummation. It is generally performed after the attainment of puberty after an interval of at least 5 days or so.

9. Yes, I think that attainment of puberty is usually a sufficient indication of physical maturity in this country to justify consummation but, as stated in the previous question, it is not allowed without an interval of some days in the interest of the girl's health.

10. At the age of 14.

11. I know of no such case.

12. High maternal and infantile mortality is chiefly due to the ignorance or non-observance of the elementary rules of hygiene, though there are cases in which early consummation and early maternity are responsible for the breakdown of the mother's health or the death or weak state of health of the children. Early marriage among the middle class *Bhadralogs* in Bengal is now almost a thing of the past. I think the intellectual or physical deterioration of the boys and girls is mainly due to poverty—the children being ill-housed, ill-fed and ill-clad.

13. As stated in (1) public opinion is quite indifferent.

14. Emphatically no.

15. Difficulties are sometimes experienced when the medical experts differ in their opinions. I think they cannot ascertain the age except within certain limits. I cannot suggest any measure to remove or minimise these difficulties.

16. I think this is a question for medical men.

17. Certainly.

The nature and amount of punishment prescribed at present seem to be quite adequate.

18. Yes; in the case of offences within the marital state, I would suggest a trial in camera.

19. No safeguards provided by legislation can prevent collusion if the husband's and the wife's people are on friendly terms. Where they are at logger-heads, there is risk of improper prosecution or extortion.

20. No. I am decidedly in favour of the latter alternative (i.e., fixing the minimum age of marriage).

21. I would certainly prefer to rely on the progress of social reform by means of education and social propaganda than on strengthening of the penal law to secure the object in view.

**Written Statement, dated the 29th August 1928, of His Grace the
ARCHBISHOP OF CALCUTTA, Calcutta.**

I am in receipt of your letter of the 23rd instant. I am somewhat doubtful of the influence which the opinion of the Church of Rome may have on the people

outside her jurisdiction. But since you are anxious to get the testimony of the Catholic Church with regard to the Age of Consent, I cannot do better than to expose shortly the law of the Catholic Church in this matter. Against child marriage, the Catholic Church raises a threefold objection:—

1. It will seldom ensure the free mutual consent essential to the very validity of the marriage contract by which the parties surrender to one another and for life, the exclusive right over their body for the end of procreating children.

2. It may lead to cohabitation before puberty, which besides entailing great harm to the physical health of husband and wife, does more harm still to the soul owing to the occasions it offers of unchastity.

3. It almost unavoidably leads to cohabitation before the time when both husband and wife are truly fit (with no harm to themselves) to generate healthy children, which time does not coincide with that of puberty.

The Catholic Church therefore:—

- (1) Holds as invalid by natural law marriages performed before either party has attained a sufficient use of reason to be able to understand the meaning the binding nature and, in general at least, the purpose of the marriage contract. (Although such marriages might be validated later on by mutual consent.)
- (2) Holds as sinful all cohabitation between couples conscious of either's impuberty or unfitness to generate healthy children (without great harm to themselves).

And as to her own subjects, the Catholic Church decrees:—

- (1) That males before their completed sixteenth year and females before their completed fourteenth year cannot validly marry. (Canon Law, 1067, 1) (If special circumstances occur and there are very serious reasons, a dispensation may be granted, but this will happen only seldom.)
- (2) That although a marriage contracted at the ages above mentioned is valid the pastors of souls must endeavour to dissuade all young men and women from contracting marriage before the age at which marriage is usually contracted according to the customs of their country. (Canon Law 1067, 2.) This age, in Europe, is generally above that fixed by the Catholic Church as a minimum for *validity*. It is to be noted that the tendency of the Catholic Church has long been to raise the Age of Consent, not to lower it.

**Written Statement, dated the 9th August 1928, of Mr. H. R. SEN, M.A.,
B.L., Sub-Divisional Magistrate, Ranaghat, Nadia.**

1. There is perhaps not much dissatisfaction with the present state of law as to the Age of Consent as contained in sections 375 and 376 of Indian Penal Code, except in the advanced and in the educated upper classes of Indian Societies amongst whom the marriageable age of girls is now above 15 on the average or about 16 in most cases.

2. I consider the *Age of Consent* should be advanced. The above fact of the marriage of girls now in an advanced age makes it desirable that the age of the consent should be advanced as in the proposed amendment of the Indian Penal Code, sections 375, 376 and 376A (New sections proposed). This will provide a safety for the unmarried girls, who are often exposed to the danger and lust of evil-minded men around them. In the case of married women also, it will provide an additional safety, although some safety is still provided in the *age of majority* in sections 361, 366, 366A, 372 and 373 of the Indian Penal Code, which sections are intended for the protection of minor girls under 18 years of age.

3. In Ranaghat sub-division of Nadia and in fact in area near about Calcutta, crime of outraging the modesty of women and seduction are of common occurrence. In cases of improper seduction (kidnapping and abduction) charges of raping is also alleged often times as a natural concomitant of such misdeeds.

It is difficult to state just now the result of amendment of law made in 1925, in raising the Age of Consent to 14 years unless sometime had elapsed. It is hoped this will have a far-reaching effect in reducing cases of improper seduction of minor girls for immoral purposes.

4. Cases occurring in this head rarely come to court. Parties adjust themselves or settle up in case of infringement of law. In my experience of about 20 years, as a Magistrate, I came across only one case in Brahmanberia sub-division in the district of Tippera of "Rape by husband." At that time the Age of Consent was 12. By spread of education and in view of marriage of girls at an advanced age beyond 13, I think the Age of Consent can be safely advanced to 14 in marital state. In the upper educated classes, the change will be hardly felt as I have observed before, the marriageable age of girls now, being between 15 and 16 years. In the lower strata of Indian societies the spread of education will create the necessary public opinion in time and the change will be much beneficial to the health of the married girls and effect a decrease in the number of infantile mortality, which is so large in India.

5. In Bengal, I think girls attain their puberty between 14 and 15. The attainment of puberty may be expedited at an earlier age by early marriage. This attainment of age of puberty is different owing to the condition of health of different people. In case of healthy girls sometimes it may be put down at the age of 13 (in rare cases).

6. (1) In Indian Societies, it is not very common to allow a married man to cohabit a married girl before attainment of her puberty. The guardians in case of early and child marriages are careful to protect girls from cohabitation before puberty.

(2) After puberty is attained which is solemnised in a ceremony known as "second marriage" the husbands are allowed to cohabit.

(3) If the girl attains puberty before completing 13 years, then cohabitation is allowed. Cases come indirectly to court. Husband complains father-in-law or mother-in-law has wrongfully confined his wife, and does not allow wife to go to the husband, and the mother-in-law and the father-in-law allege that the girl is not being sent as she is still young in age and has not attained the puberty.

7. Yes sometimes. But the prejudice is gradually dying away.

“অষ্টাবর্ষা ভবেৎগৌরী, নববর্ষাতু রোহিণী”

The earlier belief and prejudice was that if one could make gift of a গৌরী (a girl of 8 years of age) then he will attain much more spiritual benefit in after life than he would if he would marry his girl in advanced age.

The general rule was that the girl should be married and settled in life, not earlier than the eighth year, but before the signs of puberty make their appearance.

“প্রাপ্তে দ্বাদশমে বর্ষে যো কন্যাং ন প্রবচ্ছতি

মাতাচৈব পিতাচৈব জ্যেষ্ঠোজাতা তথৈবচ

ত্রয়স্তে নরকং যাস্তি দৃষ্টা কন্যাং রজস্বলাং ॥”

The reason of the rule appeared to be—

- (1) That marriage should be contracted from a sense of religious duty and not from a desire of sexual pleasure and so the immediate gratification of it is made impossible.

- (2) By marriage, a girl becomes not only the partner in life of her husband but becomes a member of the joint family to which her husband belong. Thirdly, anxiety was felt by the Hindu legislators for securing the chastity of females, which is the foundation of the happiness of home, of the belief in the reality of the family-tie and relationship, and of the mutual love and affection of the relations towards each other based thereon, which are so prominent characteristics of Hindu families. But though Hindu sages enjoined early marriage of females they did at the same time, condemn in the strongest terms the premature consummation of the same.

“ প্রাগজ্যোত্স্নাৎ পত্নীং নেয়াংগত্বা পতত্যঃ

বার্থাকারেণ শুক্রম্ ব্রহ্মহত্যাম্ অবাপ্নুয়াৎ ॥”

(গর্ভাধান)

8. The ceremony of “*Garbhadan*” is usually performed. It generally coincides with the consummation of marriage after the attainment of puberty within 16 days of the first *mens* of girls.

9. The opinion is more to be sought from the medical men whether the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage or not. But common experience shows much of present day infantile mortality can be eradicated if marriages are allowed to be consummated at an age not below 16 of the girls, when they are strong enough to bear children.

10. I think between the ages of 16 and 18 a girl in India ought to be competent to give an “*intelligent consent*” to cohabitation with a due realization of consequences, if they are educated. Otherwise it is perhaps 18 years, before they can appreciate the evil consequence of early marriage. This question can be better answered by medical man.

11. I am convinced from experience cohabitation before puberty or soon after puberty before full physical development of girl and consequent child bearing, results in great injury to her health, both of body and mind and such cohabitation also prejudicially affect the progeny. In case of some of my relations, as I have noticed, I think such early consummation of marriage was responsible for premature death of children and much ailments in the family, particularly of the mother such as Leucorrhœa, uterine and other troubles, ending in consumption. The trouble of child-bearing and rearing of children in addition to ordinary domestic duties, tell adversely on the health of the girls.

12. Yes. I consider early consummation and early maternity responsible for high maternal and infantile mortality. This certainly affects the intellectual and physical progress as a whole.

13. In both cases (of advancing Age of Consent in marital and extra-marital cases) I think in the proposed amendment in advancing Age of Consent would be welcomed generally in all classes of society.

14. No. In advanced classes early consummation of marriage is now being disliked positively. Other classes are adjusting themselves gradually to higher age.

15. In outlying sub-divisions, where there is no lady doctor attached to District Board or public dispensaries, some difficulties are experienced indetermining the age of girls in connection with offences of this class.

The best arrangement would be to have a qualified lady doctor attached to every district headquarters' charitable dispensary, whose services may be requisitioned when necessity arises by courts in the sub-divisional headquarters.

16. I think so.

17. I would separate marital and extra-marital offences. The punishment proposed in the amended sections would meet the ends of justice.

18 I would suggest a different procedure for marital and extra-marital offences. In case of marital offence, I would suggest it to be made "compoundable" with the permission of the court and the court may be given option to try it in camera, if thought necessary in the interest of public good and decency. In the proposed amendment it is proposed to be made "not compoundable."

19. I have no suggestion to make.

20. I consider the penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. In view of the religious prejudices of Indian societies, I would prefer the former, viz., to proceed cautiously by fixing a higher Age of Consent, than handling the subject by fixing a minimum age of marriage. In the latter case, (viz., in the fixing of minimum age of marriage) there is likely to be opposition from orthodox sections of the Indian societies as marriage among Hindus, is a religious and purification ceremony, rather than a contract.

21. I think the state should provide the motive force within the least objectionable limit (proceed in the line of least resistance) by raising the Age of Consent. The rest would be completed by social reform, effected by means of education and social propaganda.

Written Statement, dated the 8th August 1928, of Babu KUNJA BEHARI BALLAV, Subordinate Judge of Birbhum.

In acknowledging receipt of your letter No. 42A. C. C., dated the 27th July 1928 forwarding a copy of the questionnaire prepared by the Age of Consent Committee for an expression of my views in writing in reply thereto, I have the honour to state that as I have no personal knowledge of queries Nos. 1 to 18 and 20 in the questionnaire, I refrain from expressing my views thereon. I beg, therefore, to give below my answers only to queries Nos. 19 and 21, as they are based on my own conviction about them.

19. I am unable to suggest any feasible safe-guards against collusion to protect the offender, when husband of a Hindu girl, in-as-much-as the father or the male protector of the girl would not hazard the prosecution of the husband in the fear that the husband will be so much offended at this that he will not hesitate to cut off all connection with his wife and marry again. As regards improper prosecution or extortion by any persons, no prosecution should be entertained unless the proper guardians of the girl have given written consent to it.

21. I think that the progress of social reform by means of education and social propaganda would be far more effective than the strengthening of the penal law to secure the object in view, as the penal law would prove quite ineffective for the reasons given in my answer to query No. 19.

Written Statement, dated the 9th August 1928, of Mr. UPENDRA MOHAN BASU, Deputy Magistrate and Deputy Collector, Burdwan.

1. No. There is no dissatisfaction with the state of the law as it stands at present.

2. In my opinion, the Age of Consent in section 375 should be raised to 16, i.e., until the girl attains majority. This would protect many girls from seductions by bad men. In many cases the culprits escape on the technical ground of guardianship, especially, in the case of minor widows and also on the ground of consent by guardians who sometimes give it in collusion with the culprits. If the age be increased up to 16 the licentious people would be afraid of dealing with minor girls

as they would be punished under this section if they could evade punishment under Section 497 or 498, 366 I. P. C. But regarding marital age of consent, it should remain 13 years as it stands at present.

3. I was in the district of Mymensingh, Bogra and Bakerganj for many years. Seduction and rape are very frequent in those places. Raising the Age of Consent to 14 has made no perceptible decrease of these cases. The age should be raised to 16 in extra-marital state and the offence of rape outside marital state should be made punishable by a first class Magistrate; as material witnesses are sometimes gained over owing to delays in fixing date of trial in session court owing to pressure of work sometimes long after the date of the occurrence. Experienced Magistrates may be specially empowered for the trial of marital cases also.

4. (1) The amendment has been effective to some extent. The parents do not allow their girls under 13 to sleep with their husbands in fear of prosecution, so the consummation of marriage is consequently postponed till that age.

(2) It has stimulated the opinion in this direction of the educated public of liberal views only.

(3) The educated public of liberal views are putting off marriage beyond 13 in consequence of this amendment and also due to other causes. But if the marriage before 13 be penalised, the consent of marriage before 13 would be completely checked; but it would create hardship on some girls whose parents die before their attainment of that age, and the girls might often lose chance of best marriages and there might be some agitation in the country. In my opinion to make it effective, the husbands as well as the guardians of the girls and boys should be penalised if the girls are allowed to sleep with their husbands before the girls attain 13 years.

5. In our part of the country the girls attain puberty generally between 13 to 14 years and in some cases before 13 also if of robust health.

Yes, among the low castes, the girls, who have got to do much manual labour, attain puberty a little late sometimes after 14 even, but among the high caste families girls attain puberty a little earlier as they do very little manual labour.

6. (1) No. Cohabitation before attaining puberty is very rare.

(2) It is common soon after puberty and among all classes of society.

(3) It is common also if the girls attain puberty and be below 13 years.

Very rarely these cases come to court. I saw one case in 1926 at Tangail in District Mymensingh in which a girl of 12 years was cohabited by her husband and the father brought the case. Doctor reported the girl to be above 14 and so the case was not tried.

7. The practice of early consummation of marriage at puberty among the Hindus is due to religious injunction. In Raghunandan's Smriti it is said that husband may cohabit with his wife from the date of *Garbhadan* ceremony. If the wife wants co-habitation the husband should not deny. In Vedic and Pauranic time, even at the time of Manu, the marriageable age for the girls was 16 long after the attainment of puberty. They do not prescribe any penalty for the breach. But *Praischitta* has been prescribed for cohabiting before puberty.

8. Garbhadan ceremony is performed usually on the attainment of puberty and before consummation of marriage. It usually takes place within 7 days of the attainment of puberty and sometimes within 1 year if, for some reason, husbands cannot meet the girls. In many places this ceremony is not performed at all as girls are married often long after the attainment of puberty.

9. In all cases attainment of puberty is not sufficient indication to justify consummation of marriage specially in case of sickly girls though attainment of puberty shows that her organs are mature enough for conception and cohabitation. Fourteenth year and one year after attainment of puberty may be regarded as sufficient to justify consummation without injury to her own health and her progeny.

10. In India a girl at 16th year may be supposed to give intelligent consent with due realization of consequences.

11. I do not know any case of cohabitation before attaining puberty. But I have seen lots of cases in which cohabitation after puberty but before full physical development resulted in total injury to her health. In such cases, the girls died at child birth and in some due to uterine diseases and lost their healths in many cases. If the husbands be of good health, the children of sickly mothers are sometimes healthy and stout but if the husbands be also of immature age and sickly, their progeny is always sickly.

A girl of 13 became mother of a child. The child died within 6 months. She again became pregnant at her 15th year and lost her health completely.

12. I do not consider early consummation and early maternity as the sole cause. It is only one of the causes. But in my opinion it is mainly due to decrease of vitality among the fathers and mothers of the children owing to want of sufficient nourishing food due to struggle for existence and economical distress. People of India now-a-days, especially of Bengal, very rarely can get unadulterated nourishing food and the boys also are mostly sickly as 90 per cent. of the parents cannot afford to give them sufficient nourishing food. The boys who live in hostels and mess also often ruin their health by taking tiffin in cheap restaurants made of unwholesome food. Their progeny cannot be expected to be healthy and intelligent like offsprings of healthy parents.

13. No further development appears to have taken place in the part I live.

14. No. Women of tender age often fear cohabitation for the dread of bearing children.

15. Yes. We found sometimes that different doctors certify different ages for the same girl. Medical authority should be requested to find out some sure and infallible test to distinguish girls aged 16, 15, 14 and 13. As I saw one doctor gave opinion about a girl in my court that she was between 13 to 18. For this sort of medical opinion many culprits evade penalty.

16. If the age be raised to 16 years, the margin of error would not be minimised unless some sure distinguishing test be found out by the Doctors.

17. Extra-marital and marital offences should be separate. The punishment for extra-marital should remain as it is, but should be made triable by a first class Magistrate also. In case of marital offence the maximum punishment should be 2 years or fine or both.

18. Extra-marital should be tried by first class Magistrate also. Marital offences should be also made triable by 1st class Magistrates with special powers and the District Magistrates.

19. If each Union Board or Panchaits or village Headmen be ordered to keep a list of married minor girls of each village, this might be a check against improper prosecution or collusion.

20. Fixing the higher age of marriage would be more effective but it would create discontent and agitation. Public opinion would be against it. But public opinion would be in consonance with the legislation fixing higher Age of Consent. Among the Hindus it is religiously incumbent that the girls should be married between 8 to 13 and before they attain puberty. But men of liberal views do not strictly follow this religious injunction now-a-days.

21. I prefer to strengthening of the penal law otherwise progress on social reform would be imperceptible and would take many years to attain its object, though it is desirable that the legislation should not interfere with it and it should be relied on social reform. People once accustomed by fear of law, would be content in the end when they would realise its practical benefit after some years.

Written Statement, dated 21st August 1928, of Mr. J. C. LAHIRI, District and Sessions Judge, Rangpur.

1. No case of dissatisfaction with the state of law as contained in sections 375 and 376 I. P. C. has come to my notice.

2. The circumstances justifying retention of the law, as it is, are (a) that the question involves some social matters which should not be taken up by the legislature except for special reasons, and (b) that no complaint is heard against the existing law. The circumstances justifying an advance are: (i) that automatically the ages of marriage have risen and (ii) that the policy of conservation and gradual reform should be followed. The result of the conflicting circumstances is that the law should be amended very slowly and carefully so that the advance may be made, but at the same time there may be no unrest.

3. Crimes of seduction or rape are very frequent in the district of Rangpur, but not as far as I can find out, in consequence of the age limit now in question. In cases of abduction attended with rape it is the abduction only that is generally proved, the charge under rape failing in most cases. The amendment of the law as made in 1925 has not, in my opinion, succeeded in preventing or reducing crimes of rape outside the marital state or the improper seduction of girls.

The means I would propose to make the law effective are:—(a) to make better arrangement for the prevention of crimes in general, (b) to make some effective arrangements for the spread of education, (c) to bring the local areas into closer touch with the seats of law courts by decentralising the law courts themselves as far as possible. It appears that these crimes like other crimes vary according to the distances of the local areas from the seats of the law courts which, in our country are the only seats of civilization and education.

4. The raising of the age to 13 years has had no effect, in my opinion, in the matter of protecting married girls against early cohabitation, but there is an idea growing in advanced communities that in view of the law, it is safer to put off the marriage of a girl till the completion of the Age of Consent. It is expected that the lower classes also would gradually inbibe that idea. After marriage it is almost impracticable to put any effective check on cohabitation between husband and wife and it is also difficult to being a case of illegal co-habitation to court.

5. In the upper classes girls generally attain puberty at the age of 13 or 14, but in the lower classes the age is 14 or 15 on account of want of sufficient nutrition.

6. It is difficult to give any opinion on this point, but my belief is that after marriage cohabitation is common among all classes of people before or after puberty. As in the superior classes girls are seldom married before the completion of the 13th year, the question does not seriously arise and no cases arising out of such circumstances have come to court to my knowledge.

7. Early consummation of marriage seems due partly to the prevalent idea that within 16 days of the attainment of puberty or soon thereafter as the husband meets his wife there should be a valid retirement. To my knowledge there is, however, no religious injunction on the point. On the contrary it appears from *Manu-sanhita*, Chapter IX, Verses 89-91, *Basistha Sanhita*, Chapter XVII, *Mahabharat*, *Adi-parba*, 67 and *Shanti-parba* 288 as quoted in *Bankim Chandra Lahiri's Mahavarat Manjuri* that the injunction is otherwise. These slokes lay down that after the marriageable age the girl will wait for three years and then select her husband.

Marriageable age surely means the age of puberty and not any hypothetical age and consequently the idea spoken of above is against the *Shastras*.

8. *Gurbhadan* ceremony is rarely performed except on the first occasion after puberty in some communities. With the spread of education this is also being discouraged.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify the consummation of marriage. It may, however, be expected that on the completion of the 16th year girls may have such development as to justify consummation on scientific grounds.

10. In my opinion it is on the completion of the 18th year that a girl may give an intelligent consent to cohabitation with a due realization of consequences.

11. I have no information about any such case.

12. Early consummation and early maturity are surely responsible for a high maternal and infantile mortality.

13. It is only in the superior classes that there is the idea of extension of the Age of Consent in marital cases. In all societies, however, there is the idea that in extra-marital cases the age should be sufficiently raised.

14. Women living far away from towns are sometimes found to favour early consummation of marriage for their children.

15. Difficulties are experienced in determining the age of girls in connection with offences under sections 375 and 376, I. P. C. The measures that I would suggest to remove or minimise these difficulties are: (a) to make better rules for the preservation of birth registers in the offices of the Union Boards, and (b) to add a provision to the law that in doubtful cases the burden of proof would be on the accused to establish that the girl ravished by him is above the prescribed age.

16. The margin of error may be reduced slightly by raising the age of consent.

17. Extra-marital offences and marital offences should in my opinion be divided into two separate classes. In the case of extra-marital offences the punishment already prescribed in the Penal Code appears to be sufficient. In marital cases also the punishment provided in the Penal Code appears to be sufficient.

18. I have nothing to propose regarding the procedure of trials.

19. No safeguard can be suggested beyond those now existing against the collusion to protect the offender.

20. Penal legislation fixing a higher Age of Consent for marital cases is not, in my opinion, to be more effective than a legislation fixing the minimum age of marriage, for after marriage it is difficult to avoid cohabitation. Public opinion may be to the contrary and so I suggest that the amendment should be slowly and carefully made.

21. Penal law should be strengthened by raising the Age of Consent in marital cases to 14 years and in the case of extra-marital cases to 18 years. As no intelligent consent can be given below the age of 18, I suggest the same to be the penal age for extra-marital cases. Social reform by means of education and social propaganda would surely help the object in view, but in my opinion such measures will not be successful, unless and until the rural areas lying far away from the seats of civilization be brought into closer touch with the seats of courts and civilization by decentralising the courts as much as possible, i.e., by establishing courts at almost all Thanas. I can show by statistics that this idea of decentralisation is far from being an expensive scheme, is quite feasible and economical, and conducive to the best interests of the country in every way.

Written Statement, dated the 10th August 1928, of Babu CHANDRA KUMAR BANERJI, B.L., Chairman, Jessore Municipality, Jessore.

1. There is no dissatisfaction with the existing law as to the Age of Consent.

2. There is no necessity of making any advance on the present law relating to the Age of Consent. Any advance made by legislation will be of no practical use. It will not have the desired effect of preventing consummation of marriage in early age at least after the attainment of puberty.

3. Crimes of rape are not rare in this part of the country and cases of seduction are many. Change of law in 1925 did not succeed in preventing and reducing cases of rape and seduction. Education and social reforms are the only measures necessary and in cases of seduction and rape outside the marital state, severe punishment may decrease the crime.

4. Amendment of 1925 raising the age of consent in marital state has produced no practical result. It has neither postponed the consummation of marriage nor put off marriage beyond the age of 13 nor has it stimulated public opinion in any

appreciable manner. Nothing but education and social propaganda will have the desired effect.

5. Girls generally attain puberty between 13 and 14 ; only difference is that in cases of higher class of girls puberty is attained earlier than in cases of the lower classes of girls.

6. Cohabitation is very common just after puberty not uncommon before puberty and prevalent before the age of 13. These cases do not come to court except the extreme occasions.

7. Early consummation of marriage is not due to any religious injunction that I know of.

8. Gaona or Garbhadan ceremony is not known in this part of the country but among the Hindus there is a ceremony known as second marriage which is performed (in cases of married girls) soon after the attainment of puberty and husband indulge in sexual intercourse after that.

9. This is a question for medical men to answer.

10. At fourteen, Indian girls are quite competent to give intelligent consent to cohabitation with a due realisation of consequences.

11. This is a question which should be left to medical men principally. I have no experience.

12. Early consummation when followed by early maternity is no doubt responsible to a large extent to high maternal and infantile mortality in our country and this is also responsible for physical and mental deterioration of our race.

13. In my opinion there has been no further development of public opinion in favour of an extension of the age of consent in marital and extra-marital cases since 1925.

14. Women do not generally favour early consummation for their children but as Hindu mothers are generally very anxious for their chastity of their daughters majority of them are in favour of marriage before puberty and consummation after puberty.

15. Yes, there have been difficulties in determining the age of girls in connection with offences under sections 375 and 376. I can not suggest any effective measures.

16. No, if the Age of Consent is raised to fourteen years or upwards the same difficulties will arise, perhaps the difficulty will increase as according to medical opinion the determination of age of girls become more difficult after attainment of puberty.

17. I would like to separate extra-marital or marital offences into different offences. In cases of rape by husband before puberty the maximum punishment should not exceed 2 years. In cases of rape by husband after attainment of puberty the punishment would be of fine only not exceeding two hundred rupees.

18. No special procedure is necessary.

19. None.

20. I am distinctly of opinion that in marital cases raising the Age of Consent would not have the desired effect I am specially against fixing minimum age of marriage by legislation it would produce great harm. I do not favour any one of the alternatives. Fixing minimum age will lead to the creation of false evidence as to age avoiding the law.

21. I am of opinion that the strengthening of the penal law or fixing the minimum age of marriage and penalising marriage itself before that age by legislation will not produce any effect. Very few offences in marital state see the lights of law courts. Only in cases where death is the result of premature consummation some people come to court. Offences against present law are not common in courts. But thanks to education and social propaganda many people do not marry their girls or boys at an early age and the advancement of education and more extensive and persistent social propaganda will eradicate the evil in no time. Evils of early

consummation and early maternity from health and economic points of view (in poor country like ours) should be impressed upon the mind of the people and the social reformers and educationists must come forward ignoring all untoward criticisms that may be started against them when dealing with subject like this.

Written Statement of Mr. SATIPRASANNA SARKAR, Deputy Magistrate and Deputy Collector, Chuadanga, District Nadia, Bengal.

1. There seems to be no dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.

2. In the cases of rape which came up for trial, during my experience the question of consent never arose. The prosecutrix stated in all these cases that the accused had used force and violence. The question of age is therefore not at all material. And as such there is no objection to raising the Age of Consent for extra-marital offences to sixteen years. Though, as already pointed out, the limit of fourteen years (as fixed at present) would make very little difference.

3. Crimes of seduction or rape are not frequent in this part of the country. The amendment of the law raising the age of consent to fourteen years for extra conjugal intercourse, does not seem to have had any effect on the number of rape cases or cases of seduction. The punishment provided in section 376, Indian Penal Code is deterrent enough and no new measures are necessary.

4. The amendment of 1925 raising the Age of Consent for conjugal intercourse from 12 to 13 years has afforded no better protection to married girls against cohabitation within the prescribed age limit, than the old law, because the husband knows perfectly well that no complaint would be made against him unless something very serious, e.g., fatal injury occurs, but the law has provided for this, and no further measures are necessary. The general public seem to take no interest in legislation fixing this age: they look upon it as unnecessary encroachment upon their private right. The age at which girls are now married has of course gone up, but the amendment of 1925 has got absolutely nothing to do with it. Education, social progress, and altered times are responsible for this. The amendment is bound to remain a dead letter, and so no measures can be devised to enforce it.

5. In this part of the country, girls attain puberty much earlier than those of temperate climate. The first menstruation generally occurs between the twelfth and fourteenth years. It varies to a certain extent with the individual but the difference is not very great.

6. Cohabitation is not common here among any class of people (1) before puberty, or (2) soon after puberty. The number of mothers aged less than fourteen years is so small that cohabitation before the girl completes thirteen years cannot be said to be common. None of such cases came to court—so far as my experience goes.

7. It cannot be said that early consummation of marriage before or after puberty is due to religious injunction.

8. "Gaona" or "Garbhadan" ceremony is not performed in this country at least among the middle classes. I am not sure if this is observed by the lower classes.

9. The attainment of puberty is no sign of bodily maturity. I think at least a year should elapse after attaining puberty before a girl can be allowed to consummate marriage.

10. In England a girl can give her consent to the sexual act when she is 16 years of age. On this analogy and regard being had to the fact that in the tropics girls are precocious in sex matters and attain puberty earlier. A girl in India aged fourteen years can be considered competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. No such case has come to my knowledge.

12. From a medical point of view early consummation and early maternity are likely to cause high maternal and infantile mortality. But actually these two

factors are not so formidable. Ignorance of hygienic laws and poverty of the people, on account of which they cannot afford good lying-in rooms and nourishing food, are in my opinion, chiefly responsible for the high death rate.

13. Nobody appears to have troubled himself about the amendment of 1925 or whether the age limit should be further extended.

14. Women here do not favour early consummation of marriage for their children. In many houses young girls sleep with their mothers-in-law instead of with their husbands.

15 & 16. The question of age never arose in the cases of rape that came to my knowledge. Raising of the Age of Consent will not materially reduce or minimise the difficulty or margin of error in determining the age of the prosecutrix. Attainment of puberty is a critical period in a girl's life but after that period it is difficult for a medical man to give her exact age.

17. Marital and extra-marital offences should be separated into different offences. The punishment now laid down in section 376 may be prescribed for extra-marital offences and that for marital offences should not be more than five years.

18. The procedure of trials for marital and extra-marital offences should be the same. There is no reason why a difference should be made. The difference in punishment is sufficient.

19. No new safeguards are necessary.

20. Penal legislation fixing a higher Age of Consent is impracticable and bound to remain a dead letter but people will not be so much opposed to it as to any law fixing the minimum age of marriage though the latter will certainly be more effective in preventing cohabitation within the age limit.

21. The object in view can better be obtained by the progress of social reform by means of education and social propaganda. At present girls are generally married at the age of 14 or 15 and it is not uncommon now to find a Hindu bride aged 18 or 20. Education and social reform and not penal law have secured this. The case of Empress versus Hurry Mohun Maity reported in 18 Calcutta 49 had very little to do with raising the age of marriage which has been achieved only by education, social progress and altered times.

**Written Statement of Babu MAHATAP CHANDRA GHOSH, M.A., B.L.,
Deputy Magistrate and Deputy Collector, Bankura, dated the
13th August 1928.**

1. There is no sign of any dissatisfaction with the state of the existing law as to the Age of Consent nor can it be said that there has been approval as the bulk of the population is ignorant of the law, and there never was any agitation in the papers on the subject.

2. I must observe at the outset that I am not in favour of Mr. Sarda's bill which proposes to penalize child marriages though I entirely agree with him in the principles which prompt him to bring such a bill and I consider that an advance on the present law by further raising the Age of Consent is not only desirable but is incumbent on the state for the simple reason that it will be one of the direct remedies to check, at least, the appalling child mortality if not anything else, in this unhappy land. According to Susruta (Chapter XXXV) and old medical treatises of unbounded authority a man attains manhood on reaching the age of 25 years and a female womanhood on reaching the age of 16 years and a girl becoming a mother before 15 brings death upon her child. Such child does not live long and if it lives it remains a weakling (Chapter X). 75 per cent of the Bengali youths suffer from physical defects and I am of opinion that immature mothers rendered wrecks by premature child-birth rob the future generation of their birth right to live and to live free from disabilities.

3. In the province of Bengal crimes of seduction or rape are comparatively more frequent in the Dacca and Chittagong divisions than in the rest of the pro-

vince as it appears from the number of criminal cases which come to court. The amendment of the law made in 1925 does not appear to have any appreciable effect in preventing or reducing cases of rape. It is very doubtful if any legislation could improve the situation unless the moral standard of the masses could be uplifted by education.

4. The amendment does not appear to have any effect in protecting married girls against cohabitation with husbands within the prescribed age-limits in any of the three ways mentioned in the question. It is only by education that we can stimulate public opinion which seems to be the only way to make the law more effective. In Bengal where the Village Self-Government Act of 1919 has been introduced the agency of the union boards may very profitably be utilized if the influential members of the board could be prevailed upon to carry on propaganda in imparting a knowledge of the baneful effects of cohabiting with girl-wives below the age of 16 years and the legal consequences arising therefrom.

5. Among the well-to-do classes girls generally attain puberty between 12 to 13 years, but among the labouring classes they attain puberty between 13 to 14 years.

6. Cohabitation is certainly not common in our part of the country before puberty but I am not aware if it is common soon after puberty or before the girl completes her 13th year. Such cases seldom come to court.

7. I am not aware if there is any religious injunction for early consummation of marriage before puberty, but there are strict religious injunctions for giving the girl in marriage before her attaining puberty. The fact seems to be that what goes by the name of Hindu marriage is really betrothal. The real marriage (or the second marriage ceremony) has lost its former importance and the betrothal is mistaken for the marriage. Hindu society used to have young mothers but certainly not immature mothers. In joint Hindu family the object of marrying a child wife was to train her up in the family of the husband and to accustom her to the new environment. In support of my contention I am quoting the following authorities :—

১। অষ্টবর্ষা ভবেকৌরী নব বষা তু রোহিণী ।

দশমে কন্যকা প্রোক্তা অন্তর্দ্বারং রজস্বলা ॥

তস্মাৎ সপ্তমসরে প্রাপ্তে দশমে কন্যকা বুধৈঃ ।

প্রদাতব্য প্রথমেন ন দৌষঃ কালদৌষজঃ ॥অঙ্গিরাঃ ।

২। কন্যা দ্বাদশ বর্ষাণি যাহপ্রদত্তা গৃহে বসেৎ ।

ব্রাহ্মত্যা পিতৃস্তৃত্বাঃ সা কন্যা বরয়েৎ স্বয়ং ॥যমঃ ।

৩। প্রাপ্তেতু দ্বাদশেবর্ষে যদা কন্যা ন দীয়তে ।

তদা তস্মাস্ত কন্যায়ঃ পিতা পিবতি শোনিং ॥অঙ্গিরাঃ ।

৪। সম্প্রাপ্তে দ্বাদশে বর্ষে কন্যাং ঘো ন প্রয়চ্ছতি ।

মাসি মাসি রজস্তৃত্বাঃ পিতা পিবতি শোনিং ॥

মাতা চৈব পিতা চৈব জেষ্ঠঃ ভ্রাতা তথৈব চ ।

ত্রয়ন্তে নরকং যান্তি দৃষ্ট্বা কন্যাং রজস্বলাং ॥

বস্ত তং বিবহেৎ কন্যাং ব্রাহ্মণো মদমোহিত ।

অসম্ভাষ্যোহপাঙ্স্তেয়ঃ স জ্ঞেয়ো বৃষলীপতিঃ ॥.....রাজমার্ত্তণ্ডে ।

৫। পিতৃগেহে চ বা কস্তা রজঃ পশ্যত্য সংকৃতা ।

অশ্লীল্য পিতৃস্তম্ভাঃ সা কস্তা বৃষলীশ্বতা ॥ অত্রি কাশ্যপৌ ।

It will be seen from the above that the Hindu sastras strictly enjoined that girls should be married before their attaining puberty on pain of eternal perdition on the father, mother and the brother of the girl, but there is nothing to indicate that the object was the early consummation of marriage before or at puberty.

8. The *garbhadan* ceremony is performed in this part of the country immediately after the appearance of the first menstruation after marriage.

9. I am definitely of opinion that attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. I consider that 16 years is the proper age for a girl's physical development to justify consummation without injury to health or progeny as enunciated by *Susruta*.

10. 90 per cent. of the population (who are illiterate) cannot be expected to give any intelligent consent to cohabitation as they hardly realize its consequences. Among the educated classes a girl may be expected to give her intelligent consent at the age of 20 years unless she gets special training in eugenics at school or better from their mothers.

11. I have not come across of any case in which cohabitation before or after puberty has resulted in injury to the girl. These cases as I have stated above seldom come to court, but there can be no doubt that one of the causes of the general deterioration of the present generation has been the result of early maternity.

12. I have already discussed this point in reply to question No. 2 above. Early consummation and early maternity certainly deteriorates the intellectual and physical progress of the people.

13. There has been no further development of public opinion in this part of the country for the extension of the Age of Consent since the amendment of the law in 1925.

14. I do not think women of the educated classes in our part of the country favour early consummation of marriage for their children. As regards the lower classes they do not appear to have any opinion in the matter. They exist simply as so many child-bearing machines.

15. Expert medical opinion seems to be the only way of determining the age of the girl.

16. If the Age of Consent is raised the margin of error in determining the age will certainly be reduced.

17. Extra-marital and marital offences should be separated into different offences the existing maximum punishment seems to be adequate for offences within the marital state, but I think for extra-marital offences whipping in public should be added to the substantive term of sentence.

18. The procedure of trials for offence within the marital state should, in my opinion, be in camera while trials for offences without the marital state should be in open court.

19. I do not think any further safeguards are necessary beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion.

20. According to the Hindu sastras any innovation fixing the minimum age of marriage cannot be thought of, the idea would be simply revolting to the Hindu conception in our part of the country. Penal legislation fixing a higher Age of Consent for marital cases is all that is necessary.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda than on strengthening the penal law—as in England the actual practice is far better than the common law on the subject.

**Written Statement, dated the 11th August 1928, of Babu SUREN DRA,
NATH BOSE, Deputy Magistrate and Deputy Collector, Midnapore.**

1. So far as my information goes there is no dissatisfaction in this part of the country with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code as amended in 1925. The present limits are generally considered sufficient.

2. I do not consider there is any practical utility in raising the Age of Consent by legislation above the present limits. 14 years is a high enough limit for the Age of Consent in the case of non-marital offences, and 13 years for marital offences. Girls usually attain puberty at the age of 13 in this part of the country. The age at which girls are married are being gradually raised owing to economic reasons. Girls are seldom married before they reach 13 or 14 years of age. The public generally resent the idea of legislation controlling their domestic affairs. It should be left to the progress of social reform and the growth of liberal ideas to raise the age of consummation of marriage as well as the age of marriage of girls.

3. Crimes of seduction are quite frequent in this part of the country. Cases of rape are comparatively rare. I do not think the amendment of the law made in 1925 has had any appreciable effect in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. The class of people who commit such offences do not even know of the amendment of the law in this respect. Wide publicity should be given to the amendment of the law in order that it may act as a deterrent to the people who are inclined to seduce young girls for immoral purposes or traffic in immature girls for prostitution.

4. I do not think that the amendment of 1925 has had any direct effect in postponing the consummation of marriage or by putting off marriage beyond 13. In my opinion it has indirectly tended to postpone both by stimulating public opinion and by making people reflect on the evils of early consummation of marriage and of early marriage and maternity. I do not think legislation can do much in this direction. Such evils can be eradicated only by the growth of progressive ideas. The age of marriage of girls is being gradually raised owing to the difficulty in getting suitable bridegrooms and the increase in marriage expenses and a corresponding desire on the part of bridegrooms to postpone marriage till they become settled in life.

5. Girls attain puberty between 13 and 14 years of age in my part of the country. So far as my information goes, the age is the same in all communities, castes and classes of society.

6. Cohabitation is not common before puberty or before the girl completes 18 years. It is common soon after puberty. Cases of offences in the case of marital relation seldom come to court. I remember these why only one such case in Tippera district within my experience.

7. I do not think the practice of early consummation of marriage has any connection with any religious injunction. There is an injunction of Shashtra that it is a sin not to meet one's wife when she has just finished her monthly course. I am unable to quote the Sastric injunction to this effect on which the following sloka of Raghuvansa is based.

धर्मं लोप भयाद्राज्ञी मृतुस्त्राच मिमां सरन् ।

But I do not know of any penalty presented for the breach of this injunction. This injunction is not generally known and does not act as a motive for the practice of early consummation, which is the inevitable consequence of early marriage.

Consummation of marriage before puberty of the bride is forbidden in the Sastra and according to the customs of the country. In former times though girls used to be married at a tender age, they would not be allowed to live with their husbands before attainment of puberty. Girl-wives generally used to live in their parents' houses till the *Dviragaman* ceremony which would take place at about the time

when they would attain puberty. This practice has now unfortunately degenerated into the present system of having the *Doirayaman* ceremony within 10 days of the marriage.

8. "Garbhandhan" ceremony is usually performed in my part of the country soon after the attainment of puberty, i.e., whenever the bride next meets the bridegroom after her attainment of puberty. But in the progressive sections of the community in which girls are married after the attainment of puberty. This ceremony is generally dispensed with or often performed on the day following the marriage.

9. I consider the attainment of puberty to be generally a sufficient indication of physical maturity to justify consummation of marriage in the case of normally healthy girls. It is difficult to fix a limit of time or age in this matter as in some cases girls are sufficiently well developed just after puberty to justify consummation without injury to their health or that of their progeny, while in other cases girls are not physically fit for consummation on the ground of their own health or of their progeny, even on attainment of a fairly advanced age. In my opinion there is risk of injury to the health of the normal girl and of her progeny, if marriage is consummated before a girl completes the age of 14 years. But a normal girl runs the risk of injuring her own health as well as that of her progeny if she gives birth to a child before she completes her 16th year. So in my opinion there is no objection to consummation of marriage at any age between 14 and 16 provided some birth control method is adopted to prevent conception before the attainment of sufficient maturity. In my opinion propaganda in the direction of birth control methods is better calculated to attain the end of safe-guarding the health of girls and their progeny than any legislative measure.

10. I should think 14 to be the age at which a girl in India would be competent to give an intelligent consent to cohabitation with a due realization of consequences.

11. It is difficult to cite specific instances within my personal knowledge in which cohabitation after puberty but before full physical development of girls resulted in injury to their health or body or prejudicially affected their progeny. I am unable to recall any case in which injury to a girl's health or to that of her progeny is directly traceable to this cause. I could cite many instances of sickly mothers who gave birth to sickly children at a comparatively early age, but so many factors combine to bring on sickness in our girls and infants that it is difficult to trace their ill-health and that of their progeny to premature child birth rather than to other causes as lack of nourishment, overwork, want of pure air or outdoor exercise.

12. I do not consider early consummation and early maternity is directly responsible for high maternal and infantile mortality. High rates of mortality among mothers at child-birth and among infants are attributable to want to care and nourishment, insanitary housing, insufficient clothing and ignorance of untrained village midwives rather than to early maternity.

Early maternity vitally affects the intellectual and physical progress of the people in crippling the resources of the parents, the bulk of whom live from hand to mouth and have not the means to provide the infants and the mother with all that is necessary for their proper nourishment during the post-natal period and provide suitably for the education and up-bringing of the children afterwards. If children are born before the father is properly settled in life or has sufficient income, they become a source of worry and are bound not to receive as much care and attention as they should for their healthy growth. The early maternity of their young wives tends to chill the aspirations of the young husbands who take to whatever occupation is near at hand to meet the growing needs of the family, instead of exerting themselves for a better position in life.

13. So far as my information goes public opinion in my part of the country is not in favour of any further extension of the Age of Consent. The people here do not consider legislation in this respect to have any perceptible effects in checking the evils against which it is directed.

14. The women in my part of the country do not now-a-days favour early consummation of marriage for their children. They are quite alive to the dangers of early maternity and do not desire their daughters to be mothers at a premature age, but the mothers of girls in ordinary society are anxious to have them married at or shortly before or after their attainment of puberty as they believe that this conduces to the growth of love between the married couples and to make it easy and natural for the girls to adopt themselves to the family of their husbands.

15. No case within my experience in which the age of a girl was at issue in offences under sections 375 and 376, Indian Penal Code. I have no suggestions to make to remove or minimise these difficulties.

16. I do not think the raising of the age of consent to 14 years or above would tend to materially reduce or minimise the difficulty or margin of error in determining the age.

17. I am in favour of the separation of extra-marital and marital offences into offences punishable with different amounts of sentences as in the existing law. I consider the nature and amount of punishment prescribed for the offences of each class in the existing law as it stands after the amendment of 1925 to be suitable.

18. I see no reason for introducing any further differences in the procedure of trials for each kind of offence than those already provided in the existing law.

19. I have no suggestions to make in this respect, as such cases of collusion or improper prosecution never came to my notice.

20. It appears to me that penal legislation fixing a higher Age of Consent for marital cases is likely to be more in consonance with public opinion in my part of the country than legislation fixing the minimum age of marriage. As economic forces are tending to raise the minimum age of marriage and there are circumstances justifying early marriage in exceptional cases, legislation in fixing the minimum age of girls for marriage is considered to be futile and unnecessary and in some cases fraught with mischievous consequences as it may give rise to improper prosecutions.

In my opinion legislation fixing a minimum age of marriage would be more effective in preventing early cohabitation than penal legislation fixing a higher Age of Consent as it is difficult in practice to ascertain the cases of violation of the law fixing the Age of Consent in marital cases, while it is easier to enforce the law fixing a minimum age for marriage.

21. I would prefer to leave it to the social and economic forces at work to raise the age of marriage and of cohabitation with girls after marriage. The strengthening of the penal law would not in my opinion go far to secure the object in view. I believe the law has had very little effect as a deterrent in the past. Legislation in social matters is generally looked upon by the public with resentment. There are difficulties in applying the law in marital cases and possibility of abuses and false prosecutions. In any case I consider the existing law as affording sufficient safeguards to protect immature girls against oppression.

Written Statement, dated the 11th August 1928, of Pandit SURESH CHANDRA DUTTA VIDYABINODE, M.R.A.S., Pleader, Khulna,

1. Yes, in sections 375 and 376 the Age of Consent ought to be 21 because before that the girls do not sufficiently understand what they are doing. They may be influenced and misguided.

2. As regards husband the law is good as it stands now. The wife is his, he is also responsible for her personal safety. In some cases the girls attain puberty at the age of 11, but after attainment of puberty about a year is necessary for monthly course. When they menstruate monthly they become fully developed hence 13 is sufficient for husband.

The women do not acquire sufficient understanding and knowledge before 21, hence consent in other cases must be 21.

3. There are cases of rape and seduction. The act of 1925 has not been able to do away with the crime. The age should be raised from 14 to 21, when they would get sufficient understanding they are expected not to be decoyed by nefarious plans and ruffians.

4. It is very difficult to answer the question. Only one criminal case came to Sessions Court where the accused was a Muhammadan. These cases, if any, do not come to court. Marriage as usual now-a-days takes place at 13 or 14 sometimes more than that.

(1) Consummation naturally takes place after attainment of puberty, before that it is physically impossible. There is religious injunction in marriage, many attain puberty before 13 according to physical development, hence by law marriage should not be regulated.

(2) The stimulations of public opinion in that direction is the only remedy.

5. In our part of the country girls generally attain puberty between 11 to 14. It happens according to physical development, there is no difference in castes, communities or classes of societies.

6. Before attainment of puberty girls are not allowed to sleep with their husband and they also do not like it.

After attainment of puberty—there is second marriage ceremony, then cohabitation commences. No consideration of age limit, only attainment of puberty is considered. Only a case of a Muhammadan came in Sessions Court recently. I have heard of no other case.

7. Early consummation of marriage before puberty does not exist to my knowledge but exists after puberty. There is religious injunctions among Hindus that the husband should cohabit with wife after 4 days have elapsed after menstruation (bathing after menstruation).

8. Yes, *Garbadhan* ceremony is performed among Hindus after first menstruation and at least 10th day after attainment of puberty or more than that when the husband arrives.

9. No, after attainment of puberty till there is usual monthly course, generally it takes place a year after attainment. At that time she becomes fully developed to justify consummation without injury to her health and that of her progeny.

10. Intelligence varies according to persons, to a husband it is no matter, because he cares for the safety of the wife, but to a third person who cares only for the satisfaction of his lust it should be taken 21.

11. I have seen a girl who was cohabited before puberty. She gave birth to many children and died at the age of 35, her health broke down at early age.

12. These are not the main causes, insufficient fooding is the main cause, if properly fed, such cases would surely decrease.

13. There has been discussions—but a section of the public is satisfied with the Act of 1925, others want the Age of Consent to be increased to 21 in all cases excepting husband.

14. Not, but scarcely it may be.

15. Yes, there is difficulty. In each thana (Police station) a register of birth should be carefully kept after careful investigation, when a case arises this register should be produced in court.

16. No. But it may be if the Age of Consent is increased to 21 instead of 14.

17. Yes, they should be different offences as at present in sections 376, 376A. In 376A the punishment may be 6 months or fine or both.

18. Marital cases should be inquired by the Inspector of Police, it should be bailable. In court the preliminary enquiry should be held by the District Magistrate in camera. Sessions Judge also try the case in camera with the Jurors.

19. In case of improper prosecution and extortion the guardian or where there is no guardian the witnesses should be fined and the amount should be paid to the aggrieved (in marital cases).

20. No, fixing the minimum age of marriage by law would be vehemently opposed by the Hindu public as it would be against the Hindu religion and Age of Consent, if increased would do good. None of the alternatives would be in consonance with public opinion. It should remain as it is.

21. Yes, I would in case of third person. But in the case of husband the progress of social reform by means of education and social propaganda is the remedy.

Written Statement, dated the 12th August 1928, of Mr. M. M. GHOSE, M.A., Sub-Divisional Magistrate, Malda.

1. There is no general dissatisfaction with the state of existing law as to the Age of Consent—namely fourteen outside the marital state and thirteen within the marital state.

2. (1) The law of the age of consent as it is should be retained. Early marriages are still favoured by the generality of the people more from a sense of religious sanction and traditional usage than from an honest conviction of its excellence. Public opinion has not sufficiently advanced in favour of any enhancement. Legislation enhancing the age is necessary to accelerate the progress of public opinion. Social reform in India, in Bengal in particular, is extremely tardy and slow.

3. So far as this district is concerned crimes of seduction are frequent though case of rape are not. The amending law of 1925 has not yet been found to bear perceptible results in achieving the end in view. A longer period should elapse before the law will be helpful in moulding public opinion in the desired direction.

4. The amendment of 1925 has not yet been found fully effective in protecting married girls against cohabitation within the prescribed marriage limit. For practical purposes it is still a dead letter and is very slowly reaching down to the masses. It is still too early to propose any supplementary measures.

5. The girls in this side of the country usually attain puberty at twelve to thirteen years of age. This differs in different castes and classes of society.

6. (1) Cohabitation before puberty exist among people of *bhadralok* classes but not very common. Such cases are however rare among people of lower castes of the Hindu community in view of the traditional custom of not allowing the girl to go to her husband's house before the attainment of her puberty. This custom is ordinarily found to be rigidly adhered to among them but not so among the *bhadralok* classes.

(2) Cohabitation is very common after puberty.

(3) Cohabitation is common among people of the *bhadralok* classes where the married girl is ordinarily not allowed to live away from her husband's house on attainment of puberty. Such cases come to court very rarely.

7. I am not aware if the practice of the early consummation of marriage is due to any religious injunction. Nor am I in a position to quote any such authority.

8. 'Gacna' among the Beharis or *Garbhadhan* ceremony among the Bengalis is still now prevalent. This ceremony should always precede the consummation of marriage and is said to be enjoined by religious usage. It takes place generally after the attainment of puberty and where the marriage is delayed it follows the first menstruation of a girl.

9. In my opinion the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

10. Sixteen appears in my opinion to be the proper age for the purpose.

11. Cases within my personal knowledge where evil results followed such cohabitation.

(1) Age of the girl—12. Effects—mother with the child in the womb died at delivery.

(2) Age—10. Girl affected with uterine disease.

12. Early consummation and early maternity are chiefly responsible for the evil results specified.

13. There has been no appreciable development of public opinion in favour of the extension of the Age of Consent since 1925. The advance noticeable is confined to the more advanced section of the educated *bhadrolok* community.

14. Women generally favour early consummation of marriage for their children but that in my opinion is largely due to their narrowness of outlook for want of education.

15. Medical examination is the only safe and reliable criterion for determining the age of the girls for the purposes of sections 375 and 376, Indian Penal Code.

16. The difficulty in determining the age can be largely minimised if the Age of Consent is raised to 14 or above.

17. Separation of extra-marital and marital offences is desirable. I should suggest the maximum punishment to 10 and 7 years respectively.

18. I should suggest a difference in the procedure of trials. Offences within the marital state—triable by the District Magistrate or the Court of Session. Offences without the marital state—triable by the Court of Session.

19. I have no further safeguards to suggest beyond those existing at present.

20. I consider legislation fixing the minimum age of marriage likely to be more effective than penal legislation fixing a higher Age of Consent for marital cases. Such a measure will be more in consonance with the present public opinion.

21. My personal opinion is that having regard to the conditions in India and especially in Bengal and the general characteristics of the people, the penal law should be strengthened in preference to leaving it to the people to work up their own social salvation by the slow leaven of education and propaganda.

Written Statement, dated the 11th August 1928, of Mr. BIPIN BIHARI GHOSH, Secretary, Bar Association, Midnapore.

1. Dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 is not evident among the illiterate people, but the educated intelligent men of the country who always welcome social reforms for the uplift of the society, find that Act XXIX of 1925 has not been sufficiently provisioned to meet the real requirements of the country. The age limit in that Act has been too low, for the girls in this country do not develop strong health before the age of sixteen and those who become mother before that age, ruin their health and degenerate their issue. Had the age limit been fixed at 16 instead of 14 in section 375 and in the Exception to that section 15 had been substituted for 13, some provision for the betterment of the females' health would have been made.

2. The Age of Consent law ought to be advanced on account of the following grounds :—

(i) The appalling mortality of children of the soil.

(ii) Physical degeneration of the nation as a whole.

(iii) General breakdown of the health of women at the age of 18 or 20.

(iv) Ominous increase of Phthisis cases among the females.

(v) For spreading female education.

3. Crimes of seduction or rape are not frequent in our part of the country. To make the law more effective, the village Panchayets and Choukidars should be strictly directed to report all cases of rape or seduction, as common experience is that such cases are mostly hushed up. Some penal measures for not reporting these cases should be provided.

As the amendment has been made in 1925, it cannot be said within so short a period whether it has been able to prevent or reduce cases of rape outside marital state, or of seduction.

4. The amendment of 1925 raising the age of consent has been able to prevent early consummation of marriage.

(i) Public opinion in this direction should be stimulated and the enactment of any law in this connection should be published and conveyed, through the 'Panchayet' and village choudkars to the remotest huts. In Court buildings and other public places notices clearly explaining the law and its penal clauses should be hung and in some cases the law should be made known to all by beat of drums in public markets.

(ii) A temporary measure may be provided by a clause that every birth should be duly and compulsorily registered and parents will have to strictly comply with the requirements of the law on that head.

5. In my part of the country girls attain puberty at the age of 13 or 14 in general and it does not differ in different castes and communities.

6. (1), (2) Cohabitation is common in our part of the country soon after puberty. It is not known if cohabitation takes place before puberty in case of married girls.

(3) Consummation in some cases may take place before the girl complete her 13th year—but such cases never come to Court.

7. The practice of the early consummation of marriage is based upon Smritis.

8. The 'Garbhadhan' ceremony is usually performed soon after the attainment of puberty. It coincides with the consummation of marriage.

9. The attainment of puberty is not at all sufficient indication of physical maturity to justify the consummation of marriage. A period of at least 2 or 3 years should elapse after puberty when the girls' physique may be fit for bearing the strain of consummation.

10. An Indian girl may be competent to give an intelligent consent to cohabitation at the age of 16.

11. No specific instance can be quoted. But cohabitation before full physical development of a girl seems to result in injury to her health and prejudicially affects her progeny.

12. There are no doubt various causes which lead to the high maternal and infantile mortality but certainly early consummation and early maternity are the main causes which vitally affect the intellectual and physical progress of the people.

13. The development of public opinion in favour of an extension of the age of consent is practically amongst the educated classes. The mass seems to be ignorant of it.

14. Women now-a-days do not favour early consummation of marriage.

15. Difficulty often arises in ascertaining the age of girls in cases under sections 375 and 376, Indian Penal Code.

As a measure for minimising such difficulties the following may be suggested :—

(i) Birth registers should be properly kept in every village with the choudkar and every birth should be registered in the local police station by the choudkar.

(ii) A copy of the birth register should be produced and proved before the Court at the time of the trial.

16. The difficulty or margin of error in determining the age may be minimised to a great extent if the age of consent be raised to 16 years.

17. Marital and extra-marital offences should be differentiated and the amount of maximum punishment should remain as it is.

18. The procedure of the trial should be as usual.

19. No external safeguards can be suggested unless the mass is properly educated in that direction.

20. A legislation fixing a higher age of consent for marital cases will be more effective than legislation fixing minimum age of marriage. This would be in consonance with public opinion in our part of the country.

21. Progress of social reform by means of education and social propaganda is to be much preferred no doubt, but such progress cannot be expected soon unless there is sanction of law behind such propaganda.

Written Statement, dated the 13th August 1928, of Mahamahopadhyaya DURG CHARAN SANKHRYA VEDANTATIRTHA, Principal, Bhagvat Chatuspatty, 21-A, Ganga Prasad Mukherji Road, Bhowanipore, Calcutta.

1. There is much dissatisfaction due to the following reasons :—

- (1) The existing law is an interference with the rules regarding married life as laid down in the Shastras. The result is that people are losing their faith in religion and are therefore becoming more selfish, unruly and mere slaves to passions. This is causing much harm to society.
- (2) The ancient laws of society should not be changed so long as the people are not fit or anxious for a change.
- (3) The existing laws in the penal code furnish opportunities to evil-minded people to harass good natured people.

2. The law of the Age of Consent should be modified so that it should not be criminal to have intercourse with one's own wife even though she be less than 13 years.

3. Cases of seduction or rape though not very common in my part of the country sometimes do occur. But the amendment of 1925 raising the age of consent to 14 years has not resulted in preventing or reducing much cases. On the other hand the existence of grown up and unmarried girls draws the evil eye of wicked persons to such girls, so that it is dangerous for poor people to live with unmarried and grown up girls.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been effective and cannot in my opinion be effective. Because

(1) on account of irreligious education in schools the boys do not develop their character properly ;

(2) by reading immoral fiction and frequenting the theatre and bioscope there is improper excitement in their minds and also an eagerness for enjoyment.

Hence if they are not married early they resort to filthy ways to satisfy their animal passions. Instances of this kind are not rare. It is against the Shastras and also medical opinion to marry youths of 20 to 22 years to girls of more than 10 or 12 years. Guardians who are moral and religious take sufficient precaution about cohabitation of their sons. In my opinion there can be no good effect if attempt is made to remove the evils by legislation without giving religious instruction to boys. Hence every effort should be made to awaken the religious feeling in the minds of people.

5. Girls attain puberty at the age of 11 or 12 years. It depends upon development of the body.

6. Cohabitation generally takes place soon after puberty, may be before or after 13. The practice is based on religious injunction.

7. The Shastras enjoin that girls should be married before puberty, otherwise the father will incur great sin. Manu, Jagnyabalka and all other lawgivers are unanimous on this point.

8. Garbhādhān is a religious ceremony and not a local custom. It is celebrated within 16 days of the first appearance of the menses. Failure to observe it causes sin. Cohabitation is a part of the Garbhādhān ceremony.

9. I do consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. It seems to be the intention of God. Birds and beasts furnish examples of this truth. I do not think that the offsprings are weak if the girls are married when young. Early marriage is prevalent in this country from time immemorial. But the people of the older generation were stronger and more long-lived than the present generation. The Brahmos marry their girls at an advanced age. Their children are not stronger or healthier.

11. I do not know any such case.

12. I do not. I think that the present loss of health among Indians is due to want of sufficient nourishing food, want of self-control of husbands and wives, and other natural causes.

13. No. People are mostly ignorant of this law. The present rise in the age of marriage is due to poverty. People are too poor to marry their girls early.

14. Women are very anxious to give their children in marriage early—women are more anxious than men.

15. Yes, difficulties are experienced. I do not think such difficulties can be removed in any way. There is no other option than to rely on the statement of the parents of the girls. The testimony of doctors is unreliable.

16. There will be no good result if the age of consent is increased to 14 years.

17. Yes, sexual intercourse between married persons should be never considered a crime.

18. Same as 17.

19. I think that trial by village panchayets will protect the law from abuse to some extent.

20. It is not advisable either to raise the age of consent or to increase the minimum age for marriage.

21. I am strongly of opinion that the matter should be left to public opinion and should not be regulated by penal law.

Written Statement, dated the 12th August 1928, of Mahamahopadhyaya Pandit PANCHANAN TARKARATNA, Bhatpara, 24-Perganas, Bengal.

1. The people do not wait for the statutory age. The consummation of marriage (Garbhādhān) is performed on the attainment of puberty and hence there is no dissatisfaction.

2. Further raising of the age would seriously affect the religious susceptibilities of the people and cause widespread dissatisfaction. Making a further advance is not prudent or justifiable.

3. Crimes of seduction or rape are rare in this part of the country. I do not think the raising the age of consent to 14 years succeeded in preventing or reducing cases of rape outside marital state. Improper seduction of girls might have been affected to certain extent. Prompt action by the police to apprehend the culprits seems to be the only means to stop these offences.

4. I do not think the amendment of 1925 raising the age of consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit (1) by postponing the consummation of marriage, (2) by stimulating public opinion in that direction or (3) by putting off marriage beyond 13.

The religious sentiment of the people requires that the marriage of girls should be performed before puberty and consummation of marriage on the first appearance of menstruation. I do not think any steps are required which would interfere with the religious sentiments above referred to.

5. The usual age at which girls of this part of the country attain puberty is 12 to 14. No difference is ever experienced in different castes and communities.

6. Cohabitation is not common before puberty but it is common after puberty. Cohabitation takes place before the girls complete 13 years if they attain puberty before that age. None of these cases come to court.

7 and 8. Consummation of marriage at puberty is enjoined by religious injunctions. The Hindu Shastras enjoin certain religious ceremonies called *garbhadhan* on the first happening of puberty. All Hindu Shastras refer to this ceremony. The husband and wife have to fast and gods have to be worshipped and *Sradh* has to be performed. The Mantras that have to be recited on this occasion conclusively establish the point that *Garbhadhana* has to be done on the first menstruation *vide* *Bhabodeva* which mentions in many mantras 'First occasion of the menstruation.' Moreover, on the first occasion of the menstruation '*Apakarsa Sradha*' is prescribed by the *Dharma shastra*. The *Aswalayana Grihya Parisista Ch. I.* enjoins clearly that the ceremony has to be performed on the first occasion of menstruation. *Garbhadhana* coincides with consummation of marriage. It is to be done within 16 nights after the first menstruation. *Garbhadhana* is invariably performed in this part of the country. All genuine Hindus observe this ceremony. Its antiquity dates from the oldest times. This practice has been observed from remote ages continuously without any intermission. In all religions books this ceremony has been emphatically insisted on. By its omission, one incurs sin and the progeny born of him becomes unholy and corrupted.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

10. No definite age can be fixed in regard to it. Puberty which varies with physical vigour and development is the only point to be taken into consideration. All girls attaining puberty can give consent to cohabitation.

11. I am a Sanskrit professor and preceptor, I am in touch with the whole Hindu society of Bengal, I have no such experience that cohabitation after first appearance of puberty resulted in injury to health or prejudicially affected the progeny. Long lived strong progenies have been found to be produced from such cohabitations.

12. I do not think consummation after puberty can be said to be early consummation. In this connection I would invite the attention of the committee to pages 10—12 (a chart of the census report) of the pamphlet published by Babu Charu Chandra Mitra, Attorney-at-Law (a copy of which will be sent hereafter).

13. I have no experience about this.

14. All favour consummation on the attainment of puberty.

15 and 16. The difficulty in determining the age will not be reduced if age of consent is raised to 14 years or above.

17. I do not think it is at all necessary if puberty is fixed as the age of consent.

18. There is no need of suggesting any difference in procedure of trials if puberty is made the age of consent.

19. Not necessary if puberty is made the age of consent.

20. People of this part of the country consider their religions as sufficient safeguards which enjoin (1) marriage before puberty and (2) consummation on the attainment of puberty.

21. I am strongly against the codification of any penal law in such matter. The normal evolution in all matters, religious and social, should not be interfered with any legislation. The civil law should not interfere with the marriage law, marriage being a sacrament with the Hindus.

**Written Statement, dated the 15th August 1928, of Mr. A. N. SEN,
Bar.-at-Law, District Judge of Nadia.**

1. I am not aware of any dissatisfaction with the state of law as to the age of consent in sections 375 and 376 of the Indian Penal Code. My experience is that there is some difficulty in proving the age of the victim if she is above the age of puberty, i.e., if she is above 13. In this country births are seldom registered among the middle and lower classes of Hindus and Mahommedans. Apart from the oral testimony of the mother or father there is seldom any documentary proof of age and as is well known the medical tests are usually inadequate for ascertaining with any degree of certitude the exact age of a girl when she is over 13. The tests usually applied are an examination of the teeth and general development; more elaborate tests such as the ossification test cannot be made outside the presidency towns owing to lack of scientific appliances. The usual tests are not sufficient to conclusively establish that a girl is below 14. The usual answer given by medical witnesses is that it is not possible to definitely assert whether a girl is 13 or 15. I have therefore found considerable difficulty in arriving at a definite conclusion that a girl is below 14 in cases where the girl has passed the age of puberty. This difficulty, however, can only be removed by making it compulsory to register births.

2. The matters for consideration which arise in a deliberation regarding the amendment of the law of rape are entirely different from those which appertain to the revision of the law regarding the marriageable age or the age of the consummation of marital rights. Eugenics, the physical welfare of the race, the effect of early motherhood on women, the question whether the offspring of juvenile parents are degenerate and kindred subjects are the main matters which should be considered in deciding the latter question; it is obvious that these questions can have no place in considering the penal law regarding rape. Here the main question for determination is when a girl is capable of giving a rational consent. One should carefully avoid all confusion of thought by isolating this question from all other questions of morality, sentimentality or the physical well being of the race. Before deciding on any amendment one should also consider the feasibility or practicability of enforcing the amended law as also the danger of a misuse of the law for purposes of blackmail. I am of opinion that the age of consent as contained in sections 375 and 376 of the Indian Penal Code should not be raised for the following reasons:—

- (1) In this country most girls are married before the age of 16 and are used to the act of sexual intercourse. The fact of sexual intercourse by a man with such a girl with her consent will be most difficult of proof. The usual *indicia* in rape cases are marks of physical injury on the sexual organs or other parts of the body. If a girl is a virgin or of very tender years, marks of injury on the sexual organs will be found even if the sexual intercourse takes place with her consent. In the case of a girl of 16, who in this country will usually be married, the fact of sexual intercourse will be extremely difficult of proof if it is performed with the consent of the girl. This is one reason which is against the raising of the age of consent.
- (2) In answer to the first question, I have already explained the difficulty regarding the proof of age. If the age is raised to 16 the difficulty of proof will be still greater.
- (3) The uncertainty of proof will probably lead to false cases being laid for purposes of blackmail.
- (4) Indian girls over 14 years of age usually have sufficient knowledge of sexual matters to enable them to give a rational consent.

3. Crimes of seduction or rape are not frequent in this part of the country.

The annexed statement would show that the raising of the age of consent to 14 years has made no appreciable improvement in the direction of preventing or reducing cases of rape outside the marital state.

4. (1) No. In many cases there is consummation of the marriage soon after the wedding irrespective of the fact as to whether the girl is above or below 13. This is very often the case amongst the lower classes.

(2) No.

(3) Marriages are now being put off in a large majority of cases beyond 13 partly on account of the inability of the parents of the girls to meet the exorbitant demands of the bride grooms' fathers and partly on account of the desire of the *Bhadraloke* class to marry their girls after 13. In my opinion the present law is futile. It cannot be expected that either the wife or her people will invoke the aid of the law in such cases and without their assistance the offence is likely to remain undetected. From 1922 to 1927 only one such case came to light in this district and this was only because the girl died. The object of the section can only be attained if the marriage itself is penalised by the law. I suggest that the marriage of a girl below the age of 16 be made a penal offence.

5. Girls in this part of the country attain puberty generally at the age of 12 or 13. This differs in different castes and communities. Those who live in towns and belong to the upper classes attain puberty earlier than those who live in villages and belong to the lower classes.

6. Cohabitation before or soon after puberty and before the girl completes 13 years is common among all classes (specially amongst the lower classes) of people in this part of the country.

Only those cases which end fatally come up to Courts.

7. Sastras enjoin the consummation of marriage immediately on the attainment of puberty but this view is losing ground. It is honoured more in the breach than in the observance. Failure to consummate marriage on the attainment of puberty is no longer punished by social ostracism.

8. *Garbhudan ceremony* or *second marriage ceremony* as it is commonly called is not in many cases performed at the present time, partly for the reason that many girls are now married at about 16 or more after they have attained puberty and partly for the reason that many people are now giving up old customs and do not obey sastric injunctions. When it is performed it is performed on the 4th day or such other day of the 14 days after the girl's first menstruation as is considered auspicious and it coincides with the consummation of marriage.

9. I do not consider that the attainment of puberty by a girl is a sufficient indication of physical maturity to justify consummation of marriage. Although a girl attains puberty in India at the age of 12 or 13 she is unfit for cohabitation and child-bearing till she is older and more developed. I would fix 16 as the age of the girl for the consummation of marriage.

10. At the age of 14. This may seem contradictory to my opinion that the marriageable age should be 16 but as explained before considerations which come into operation when considering the question of marriage are different from those which appertain to the question concerning rape.

11. One case was tried by the Court of Sessions here in 1923 in which cohabitation before puberty resulted in the death of the girl who was 10 years old.

12. I do. High maternal and infantile mortality is due to early consummation and early maternity. The progeny of such unions are feeble physically and mentally. This must necessarily react adversely to the general efficiency and well-being of the race.

13. I am unable to give any definite answer.

14. No.

15. See answer to question 1.

16. No.

17. Yes. As I have suggested before that the law of marital offences should be altered by making a marrying of a girl under 16 a penal offence. The maximum punishment for such an offence should be 3 years' rigorous imprisonment. As regards extra-marital offences the present maximum should be maintained.

18. In view of my previous answers, I suggest that the offence of an 'illegal' marriage should be made a cognisable offence not bailable or compoundable. A trial by jury would be ineffective. So I suggest that the offence be made triable by the District Magistrate or Presidency Magistrate.

19. Yes, I would suggest that in all cases unless a birth certificate be produced in proof of the age of the girl, the girl should be sent for medical examination to a Presidency Town or to a Civil Surgeon of a hospital which has modern appliances for definitely ascertaining the age of the girl.

20. I would suggest that legislation fixing the minimum age of marriage would be more effective. I think that public opinion would eventually support this although a show of opposition might be made at present. In my view much of the so-called public opinion is not genuine and is expressed merely for the sake of opposition. It is not based on a real foundation of religious conviction. In my opinion many persons express such opinion chiefly out of fear or out of a desire to appear to be champions of orthodoxy and nationalism and not from a true belief in the desirability of the present state of affairs. If the law is altered public opinion will soon veer round. The difficulty of getting girls married early when the father has not had a chance of saving enough to meet the expenses of the marriage will be greatly lessened if this legislation is effected.

21. I would prefer to rely on the strengthening of the penal law. The other process will be too long and will perhaps never result in anything.

STATEMENT.

Rape.

Case.	Age of girl.	Whether stranger or husband.	Punishment or order.
1922.			
S. T. I for October 1922 .	4	Stranger age 30 .	5 years, 22nd November 1922.
S. T. IV for April 1922 .	8	Do. age 18 or 19	3 years, 21st June 1922.
S. T. VI for April 1922 .	7 or 8	Do. 31 .	6 years, 30th June 1922.
1923.			
S. T. I for March 1923 .	10	Husband . .	Girl died, 2 years, 18th August 1923.
1924.			
S. T. III for July 1924 .	18	Stranger . .	7 years, 28th August 1924.
S. T. I for September 1924	15	Do. age 33 .	2 years, 25th September 1924.
1926.			
S. T. II for May 1926 .	7	Do. 16 .	5 years, 24th June 1926.
S. T. II for July 1926 .	10	Do. 19 .	5 years, 14th September 1926.
1927.			
S. T. I for October 1927 .	12	Do. 23 .	2 years, 9th May 1928.

Written Statement of Mahamahopadhyaya Dr. BHAGABAT KUMAR GOSWAMI, SHASTRI, M.A., Ph.D., Professor, Hugli College, Bengal, dated the 11th August 1928.

Preliminary observations.

Hindu religion may be viewed from two broad standpoints. One is concerned with essential or fundamental religion, and the other with what may be called conventional religion. Religious rites of the Hindu, in almost all spheres of domestic and social life, have been always more or less of a mixed character. The conventional side, from its very nature, has undoubtedly varied from time to time, place to place, sect to sect, and even from individual to individual. The varying conventions have never however materially affected the foundations of Hindu religion. No custom has been allowed to grow, no usage has been permitted, which in one way or other, does violence to the fundamental religious truths as conceived in Hinduism. Time, place, sectarian views, individual aptitudes have shaped the conventions, always in strict uniformity to the basic principles of a Hindu's religious life. The Smarta and Tantric literatures of the Hindus are mainly concerned with the conventional side of Hinduism, though they always take good care to shew that the various conventions are appropriately built upon the solid foundations of religious truths. It was always, however, understood, among the saintly authors of these literatures, that the conventions never represented an immutable, invariable, order of things—they embodied the practical and spiritual necessities of varying times, places, sects and individuals. Hence it was that the smritis and tantras revealed different stages of cultural progress among the Hindus. This point was clearly brought out and emphasised by the Puranas when they appeared prominently on the scene. The Puranic cult has indeed pushed the conventional side more and more in the background, all along laying stress upon the spiritual and devotional side of religion. For a long time since the advent of the Puranas, practical and popular Hinduism has been largely dominated by the Pauranic views, though the conventions have never been entirely disregarded. The sacred traditions that have grown round the conventions have always rightly been regarded as too valuable assets to be lost in their entirety. None can deny that convention in certain circumstances do substantially help the growth of a healthy religious mentality. Only when they are found to have positively outgrown the needs that brought them into existence, and are proved to have degenerated into a condition in which they are a menace to the spiritual weal of society at large, that any reforms with regard to them can be thought of. With these preliminary observations I now proceed to answer the questions in detail:—

1. Yes there is growing dissatisfaction.
2. (2) The frequency of the crimes as well as the changed cultural outlook of the community as a whole appear to justify an advance.
3. Yes, in parts of Bengal. No, not to any appreciable extent at any rate. Failure to report on the part of one who presumably has knowledge of the crimes, specially a medical man, should be made punishable.
4. Not at all. One remedy that is now generally supported is that the marriage age must be raised by law. There is however a considerable number of people—among the orthodox sections—to whom marriage before puberty of girls is an inviolable religious law. The law in such cases must be relaxed. The conscientious objections must be excluded. The reformers can afford to put up with this limitation in this world of imperfections they can patiently wait to see how far pressure of popular opinion and popular examples suffices to bring about the change they desire.

The best remedy would be to have the matter entirely to social workers and propagandists on the one hand and to vigorous intensive educational reforms on the other.

5. Generally 14.

6. Among the upper classes the marriage age has been raised generally above 13—so the question do not arise. But among lower classes the case is different—and the crime is very much prevalent.

7. Only among a section of the orthodox people of the higher castes. Of course there numerous texts in the conventional literature which make breach of the practice punishable. The punishment is to be meted out in the other world mainly

8. Not generally, but among certain sections of the orthodox people, though the majority even among them are discarding the practice. The ceremony is observed when the first sign of puberty makes its appearance, but the consummation may and apparently does take place in many cases before that.

9. No. Generally 16.

10. That depends upon her education.

11. Yes. General health has been shattered, and there has been a nervous breakdown.

12. At any rate 'considerable' mortality. Generally unfit somehow or other.

13. Specially in extra-marital cases. That opinion is generally held.

14. Rarely, if at all.

15. Yes. An efficient system of birth registers and birth certificates.

16. That is not the remedy.

17. Certainly. Nominal for marital offences defending the eradication of the evil on the growing cultural sense of the people.

18. Yes. Within the marital state, the trial should be through respectable people on familiar terms with the family.

19. Failure to inform on the part of those presumed to know, and malicious information should both be punished.

20. A minimum age of marriage may be fixed by law—but conscientious objection ought to be excluded in that case. The best remedy is suggested in answer to question 4.

21. On the latter.

Written Statement, dated the 6th August 1928, of Mr. N. G. MUKHERJI, Esq., Additional District and Sessions Judge, Noakhali.

In reply to your No. 42 A.C.C. of the 28th ultimo, I have the honour to state that so far as the educated people of all castes and creeds of Bengal are concerned further raising the age of consent and fixing of age—limits for marriage of girls and boys as proposed in Mr. Sarda's Bill are quite unnecessary. Ordinarily a girl is now-a-days seldom married below the age of 14 and a boy below the age of 22. The automatic advance in the marriageable age is, in my opinion, mainly due to change in the economic conditions of the people and is practically the result of spread of western education and of contact with western ideas. The educated people have now to a large extent—though not yet fully consciously—realised the true character of marital relationship from the physical and practical points of view in the light of the present day circumstances and so have gradually come to disregard the shastric injunctions in favour of early marriage.

2. So far as the bulk of the uneducated masses is concerned, the proposed changes in law, I am afraid, will do them very little good. They would rather be sources of tribulation and danger to the ignorant masses. Child marriage still obtains among them. They do not know law and do not even care to enquire about it, until they are in some difficulties. The best means of improving their condition is, in my opinion, not by legislation, but by spread of education.

3. I would now proceed to answer the questionnaire and would attempt to give reasons where necessary.

1. So far as I know, the answer should be in the negative.

2. So far as my experience of Bengal goes, I have already indicated in the first two paras. of this letter that it is immaterial whether the present age limit is maintained or advanced by a year.

3. My answer to the first part of the question is in the negative.

I am not in a position to answer the 2nd part of the question. In my experience as an Assistant Sessions Judge and Sessions Judge, extending over nearly 3 years, only one case of rape on a girl under 14 had to be tried by me and in that case, the jury unanimously returned a verdict of not guilty.

4. I have already tried to show in the first two paras. of this letter that economic and other causes are mainly responsible for raising of the age of marriage. Legislation of 1925 may have indirectly and unconsciously led the educated people to raise the age of marriage beyond 13.

In my opinion it is not necessary to take any further steps. Society should be given reasonable time and opportunity to adopt itself to present day conditions and should not be coerced. Any seeming coercion may lead to untoward consequences.

5. The usual age of puberty is between 12 and 15. This does not vary with caste, community or class. Variation may be due to other causes, e.g., personal idiosyncrasy, growth, etc.

6. So far as my experience goes, my answer to (1) is 'no' and to (2) is 'yes,' if the girl is married and the husband is at hand. My answer to (3) is qualified by my answer to (2).

Excepting the case of Hari Maity reported in L. L. R. 18 Calcutta 49 which first drew the attention of the authorities to this point, I am not aware of any other case of this nature coming to Court.

7. Yes—the authorities are given in Sanskrit in the paper marked A attached herewith. I am not aware of any case of consummation of marriage before puberty.

8. *Gaona* is known in Bengal as *Dwiragaman*. These ceremonies viz., *Gaona* and *Garbhadan* are still observed in some families. *Gaona* has nothing to do with consummation of marriage. It only connotes coming of the bride to the husband's place for the second time. *Garbhadan* is synonymous with consummation—the meaning of the word being impregnation. It can only be performed after the attainment of puberty. Generally an auspicious day—after the 4th day from the first appearance of menses and within the 16th day from the said time of first appearance is fixed for the observance of the ceremony.

9. Ordinarily, I would consider attainment of puberty, irrespective of age, as Nature's certificate of fitness for marital relationship. But there may be cases, in which, it would not be desirable to consummate marriage, after puberty, on account of delicate health or other reason. No hard and fast age or time-limit can be fixed. Every case will have to be considered on its own merits or demerits.

Three Slokas are quoted almost in all Panjikas which discourage conception or delivery at the age of 16. They are as follow :—

যা নারী বোড়শে বর্ষে গর্ভং ধ্বা প্রসূয়ত ।

সা নারী বিধবা জ্ঞেয়া যদি শত্রুসমঃ পতিঃ ॥

বোড়শাঙ্কেতু যা নারী উৎপত্তি-স্থিতি-গতিগী ।

অপত্যং তন্তু নাশ্চৎং বাতি সা চ প্রণশতি ॥

যা সূতা বোড়শে বর্ষে তত্র বা স্থিতি-গর্ভিকা ।

মৃত্যুস্তম্ভাঃ মপুত্রায়াঃ পিতৃশ্চাপি চ সন্মতঃ ॥

So far as the public opinion goes, it will not be legitimate to infer from these slokas that conception or delivery at the age of 15 or less is to be looked down upon as a matter of logical inference. The accepted interpretation is that, for some reasons, only conception or delivery at the age of 16 is condemned.

10. The girls brought up in the orthodox way—the sole aim of all their bratas in their infancy having been to be ideal wives, sisters and mothers, would be competent to give intelligent consent after attainment of puberty at any age after 12.

11. No.

12. Yes, to a certain extent.

13. I have already stated about the raising of the marriageable age. I do not think this to be an indication of the development of public opinion in favour of further extension of age of consent, as the causes leading to this change are mostly economical and social.

14. Yes, if the children are in normal health.

15. None to my knowledge.

16. I cannot answer this question.

17. Yes, so that extra-marital offences may ordinarily be dealt with more severely. The punishment now provided for rape is sufficient. In case of rape between husband and wife, a lenient sentence may be imposed, if there are extenuating circumstances.

18. The procedure should be that laid down in the Criminal Procedure Code. The Judges and Magistrates have, I think, discretion, in proper cases to shut out the public from a trial or part thereof. If necessary, such power may specially be given to the trying officers.

19. No answer.

20. I cannot say which of the two alternatives, if any, the public will favour. Personally, I think fixing of minimum age of marriage less harmful than raising the age of consent. Punishment in the former case will be visited on the heads of parents or guardians of brides and bridegrooms. In the latter case, there is a chance of permanent estrangement between man and wife.

21. I would certainly prefer progress of social reform by education and social propaganda.

These Slokas have been furnished to me by Pandit Jashada Kumar Smriti-thirtha—principal, Sanskrit Tol, Noakhali.

প্রায়শ্চিত্ত বিবেকে ।

ঋতৌ ভার্ঘ্যানভিগমন প্রায়শ্চিত্তম্ ।

বিষ্ণুঃ—পর্বানারোগ্যবর্জ্ঞ মৃত্যাবগচ্ছন্ পত্নীং ত্রিরাত্রমুপবসেৎ ।

বৃহস্পতিঃ—ঋতৌ ভার্ঘ্যাং ন গচ্ছেদ্ যঃ সোহপি কৃচ্ছাৰ্জমাচরেৎ ।

সম্বর্ত্তঃ—ঋতৌ নোপৈতি যো ভার্ঘ্যাং নিয়তাং ব্রহ্মচারিণীম্ নিয়মতিঃ ।

ক্রমান্তস্ত প্রাণায়াম শতং স্মৃতম্ ॥

এতদজ্ঞান বিষয় জ্ঞানাভ্যাসে প্রাজাপত্য ব্রতম্ ইতি শূলপানি ।

গর্ভাধান প্রকরণে সংস্কারতৎস্বত্ব স্মৃতিঃ

ঋতুমতীস্ত যো ভার্ঘ্যাঃ সন্নিধৌ নোপসর্পতি ।

অবাপ্নোতি স মন্দাত্মা ক্রণহত্য মৃত্যবৃত্তৌ ॥

আহ্নিকতত্ত্বে বশিষ্ঠঃ—

ঋতুপ্নাতাক যো ভার্ঘ্যাং সন্নিধৌ নাধিগচ্ছতি ।

স গচ্ছেন্নরকং ঘোরং ব্রহ্মহেতি তথোচ্যতে ॥

Written Statement, dated the 11th August 1928, of Babu RANJIT CHANDRA LAHIRI, M.A., B.L., Secretary, Pabna Bar Association.

1. Yes. There is dissatisfaction as regards the age of consent in extra-marital offences.

2. The cases of rape on children are rare. I do not know of any case at Pabna in which the husband has been prosecuted for rape on his child wife. An advance on the present law regarding extra-marital cases should be made. In this connection please refer to answers to questions nos. 3 and 10.

3 and 10. Cases of abduction of women are becoming more frequent. It is yet too early to pronounce on the effect of 1925 amendment. The age of consent outside the marital state should be the same as is provided for in the Indian majority Act (IX of 1875). Rape and abduction cases often fail for consent of girls who are scarcely intelligent enough to understand their own future. In cases of widow girls there is no remedy in cases of consent; in other cases though there may be prosecution for adultery but seldom any adultery case succeeds. For the safety of a society in which by far the greater portion of woman is illiterate the age of consent should be raised as high as possible.

4. As to the marital state no raising of the age of consent by law will be of any appreciable effect. The prophecy of some made at the time of the agitation over the first age of consent Bill that would be a dead letter, has, I think, been fulfilled. It is by stimulating public opinion that the desired object can be attained.

5. Puberty is attained generally between 12 to 15 years of age.

6. (1) No.

2) Yes, if they are married before attaining puberty.

(3) No.

I have not known of any such case coming to Court.

7. I do not attribute the early consummation of marriage to any religious injunction.

8. (*arhadan* ceremony is usually celebrated among the Hindus and it takes soon after the attainment of puberty. *Garbhadan* is anterior to the consummation of marriage.

9. I do not think that attainment of puberty is in all cases sufficient indication of the physical fitness for cohabitation. I believe no general age can be fixed for fitness of cohabitation in all cases. It depends on the health and constitution of the girl.

11. No.

12. Early consummation and early maternity are no doubt to some extent responsible for high maternal and infantile mortality; there are also other reasons.

13. Only the educated middle class desire to further raise the age of consent. There has been a great development of public opinion in our part of the country in favour of an extension of the age of consent in extra-marital cases since the 1925 amendment.

14. No.

15. The difficulty if any can be removed by the production of Birth Register.

16. No.

17. Yes. The maximum punishment for marital offences should be simple imprisonment for one year. No alteration is necessary as regards punishment in extra-marital offences.

18. In marital offences procedure should be as in a summons case and the offence should be made bailable and compoundable.

19. For the present I have nothing more to suggest.

20. The fixing of minimum age of marriage will certainly be more effective. The public opinion is not opposed to it.

21. There should not be any great divergence between the two. In the present state of our country any effective social reform is more difficult and we have, however, reluctantly, to depend more on penal law.

Written Statement, dated the 11th August 1928, of Babu GIRIJA BHUSAN GHOSAL, Deputy Magistrate and Deputy Collector, Shahzadpur.

1. There is some dissatisfaction with the present state of the law as to the age of consent *within the marital state* as contained in sections 375 and 376 of the Indian Penal Code. There is a general feeling among the people that sexual intercourse by a husband with his wife after her puberty at whatever age it may be attained, should not be a penal offence. While many think that the deferring of the consummation of marriage for a year or so after the attainment of puberty by the wife will be a desirable thing, they are of opinion that the realisation of this desideratum should be left to the operation of education and social propaganda and not sought by penal legislation.

2. In my opinion, the age of consent within the marital state may be left as it is, in view of the fact that girls in this part of the country generally attain puberty between the ages of 12 and 13 and public opinion is against making sexual intercourse by a husband with his wife after her puberty a penal offence.

(2) The age of consent outside the marital state may raised to 16 as proposed in Sir Hari Sing Gour's Bill as in my opinion girls below 16 are of too immature judgment to be allowed to be defiled at their choice.

3. Crimes of seduction and rape are frequent in this part of the country.

I do not think that the amendment of the law made in 1925, raising the age of consent to 14 years has reduced cases of rape outside the marital state. The natural result of the raising of the age of consent must be some increase in cases of rape—for, of the additional cases of sexual intercourse intended to be prevented by the raising of the age of consent only some are actually prevented and those which are not actually prevented go to swell the number of rape cases. But there can be no doubt that the raising of the age protected from defilement some girls who would not have otherwise been protected. But I think the range of protection should be further extended so as to bring within it girls below 16 years.

The raising of the age of consent in 1925 must have reduced to a certain extent seduction of girls for immoral purposes. The raising of the age of consent to 16 years outside the marital state would lead to a further reduction.

I do not think that the raising of the age of consent within the marital state to 13 years has afforded any effective protection to married girls against cohabitation with husbands within the prescribed age-limit. There is no doubt an appreciable volume of public opinion in favour of the protection but that has been stimulated not so much by the amendment of the law as by educative social propaganda.

I do not think that the amendment of the law has put off marriage beyond 13 in any appreciable number of cases.

I would prefer to rely on education and social propaganda for giving effect to the existing law as to the age of consent within the marital state.

5. Girls in this part of the country generally attain puberty between the ages of 12 and 13.

This does not differ in different castes, communities or classes of society.

6. In this part of the country cohabitation within the marital state in any class or classes of people (1) is not common before puberty.

(2) is common soon after puberty.

(3) is pretty common before the girl completes 13 years.

It is only rarely that any of these cases come to Court.

7. The practice of the early consummation of marriage at puberty among the Hindus can, to a certain extent, be attributed to religious injunctions such as the following :—

“ঋতুমতীন্ত যো ভাৰ্য্যাং সন্নিধৌ নোপসপতি
অবাপ্নোতি সমন্দাত্মা ক্রণহত্যাযুতাবৃত্তৌ ॥”

“রজনম্বলা বদানারী ষোগ্যাস্তাদ্ গৰ্ভধারণে
ততঃ কুৰ্ব্বীত তৎসন্দং গৰ্ভার্থং বুদ্ধিমান্নরঃ”

(Bharadwaja Sanhita)

“ঋতুস্নাতান্ত যো ভাৰ্য্যাং সন্নিধৌ নোপগচ্ছতি
ঘোরায়াং ক্রণহত্যায়াং যুজ্যতে নাত্র সংশয়ঃ ।”

(Gantarna)

(The Sanskrit *slokas* are reproduced here in Bengal characters).

8. *Garbhadhan* ceremony is usually performed among the Hindus in this part of the country. The ceremony coincides with the consummation of marriage. It is always performed after the attainment of puberty and generally within 16 days of it.

9. My personal opinion is that consummation of marriage ought to be put off till 1 year after the attainment of puberty—attainment of puberty is not always a sufficient indication of physical maturity to justify consummation of marriage.

10. I should say that the age of majority (i.e., 18 years) is the age at which a girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. I did not come across any such cases.

12. Early consummation and early maternity are partly responsible for high maternal and infantile mortality and for the retardation of the intellectual and physical progress of the people.

13. There has been no development of public opinion in this part of the country since 1925 in favour of an extension of the age of consent.

14. The women in this part of the country do not favour early consummation of marriage for their children.

15. Difficulties are sometimes experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code on account of the unsatisfactory registration of births. At present, the parents and guardians are under a obligation to report births only within the Municipal areas. In rural areas, the work is done by Chonkidars and dafadars. As Union Boards have been or are going to be established in all the districts of Bengal, I would make it compulsory for parents and guardians to report births to the Union Boards.

16. Speaking with the diffidence of a layman, I do not think that the difficulty or margin of error in determining the age would be materially reduced or minimised if the age of consent is raised to 14 years or above.

17. I do not think that extra-marital and marital offences need be separated into different offences. The law may be left as it is.

18. No difference in procedure is necessary in my opinion.

19. I have no safeguards to suggest beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion.

20. Penal legislation fixing the minimum age of marriage will certainly be more effective than penal legislation fixing a higher age of consent for marital cases but

the latter alternative would be more in consonance with the public opinion in this part of the country as being the lesser of two evils.

21. For securing the object in view, I would prefer to rely on the progress of social reform by means of education and social propaganda. Strengthening of the penal law for marital cases in opposition to public sentiments will be worse than useless.

Written Statement of Rai Bahadur JAGES CHANDRA RAY, M.A., Vidyanidhi (Puri), Vijnana-Bhushana (Benares), Retired Professor of Botany and Chemistry, Cuttack College, Bankura (Bengal), dated the 24th September 1928.

1. I admit that there is need of marriage reform but do not think that a political body like the Legislative Assembly consisting of members of various faiths and traditions is quite competent to deal with question affecting the domestic life of the Indians. The easiest and most effective way lies in the diffusion of knowledge.

2. If there must be law, it must be such as can be obeyed by the Hindus without sacrifice of their long cherished best traditions. I have recently examined the various questions relating to marriage, historically as well as sociologically, with an eye to the conditions in Bengal, and beg to enclose a copy of my article for perusal of the Committee. The questions are so intimately interwoven one with the other that any one-sided judgment on one is likely to lead to disastrous results in some other. Considering the numerous strata of the Hindu society in matter of education economic condition, and social traditions, I think that the minimum age of marriage of girls and boys should be 12 and 22, respectively. Reasons are briefly given below.

A. AGE AT MARRIAGE OF GIRLS.

I. Against 14 years.

- (1) The age violently disturbs the present custom.
- (2) It has no sanction in the sastras, which have been for the last two thousand and five hundred years regulating the age of marriage, at least among Brahmans. The Hindu society cannot stand if sastras are ignored.
- (3) All marriages will not be celebrated at the legal age of 14. Most will take place one or two years after. The increased age will be a constant source of anxiety to the parents, as it is now to those who cannot for various reasons give away their daughters in marriage at 12 or even 13.
- (4) To the poor, postponement of marriage of girls to the age of 14 or 15 will be a serious strain on their economic condition. This appears to be one of the reasons for child marriage.
- (5) It is not an easy matter to find suitable young men for girls, and fresh difficulties placed in the way of their marriage cannot but lead to the revulsion of feeling towards daughters who are even now not as welcome as boys.

II. For 12 years.

- (1) It is the maximum age allowed in the sastras, and can therefore be adopted.
- (2) Hindu marriage is strictly eugenic. (See my paper in the Mod. Rev. for Nov. 1919) and as such cannot be postponed till a late age, when likes and dislikes of girls will have been developed.
- (3) Most marriages, at least in Bengal, take place, as shown in census reports at about 11. A year's increase will not be a great innovation but will effectually

check child marriage which is in Bengal as high as 21 per cent. in certain large castes.

(4) Consummation of marriage takes place a year or so after the puberty of girls when they will be 13 or 14 years old.

B. AGE OF MARRIAGE OF BOYS.

I. Against age 18.

(1) Boys and girls do not attain youth at the same age, and boys are not young, at least in Bengal, until they are 21 years old.

(2) Boys should not be allowed to marry while they are supposed to be students.

(3) The critical age of youngmen is 21-22, and marriage before this is likely to increase the number of girl widows. (The critical age of girls is not definitely known. The census figures point to 11-12).

(4) If the wife is 14 and the husband 18, the issue of the union is likely to be a weakling and will, therefore, frustrate the object of the Bill. Susunta fixes 25 as the minimum age for a father. Vagbhata alone, a later medical writer, fixes it at 20.

II. For age 22.

(1) The arguments are given above.

(2) The difference of age of the married couple should be two years in order—

(a) that both may remain equally young or old as long as they live.

(b) that the mother may survive the father at least for a few years and save the family from rupture.

(c) Possibly long difference is a factor for more male children than female.

Written Statement, dated the 23rd August 1928, of Sreejukta NARENDRA NATH SEN, B.L., Vice-Chairman, Hooghly-Chinsurah Municipality.

1. There is considerable dissatisfaction about the insufficiency of the Law to prevent premature intercourse. An Amendment of Sections 375, 376 is needed as noted in the following answers.

2. (i) Present law of the age of consent should be modified.

(ii) It is necessary for the protection of immature girls to prevent infantile mortality and for the growth of healthy children that the present age of consent should be raised.

3. The crimes of seduction and rape are not frequent here, but occurs occasionally.

The amendment of law in 1925 has improved matters; but further increase of the age of consent is necessary.

4. (1) No.

(2) Partly effective.

(3) Yes.

5. Girls of upper classes here ordinarily attain puberty between 13 and 14 years of age. Girls of lower classes attain puberty between 12 and 13 years of age.

Age of puberty differs slightly in girls of different communities.

6. (1) Cohabitation before puberty is common in lower classes, but not so in upper classes.

(2) It is common soon after puberty in all classes if the girl is married.

(3) It is common if the girl is married and attains puberty before 13 years.

These cases do not come to the Court.

7. Practice of early consummation of marriage before or at puberty is not attributable to religious injunction.

8. The ceremony of *Garbharan* is not prevalent in this part of the country.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

Fifteen years of age or two years after attainment of puberty is the minimum for consummation of marriage.

10. In case of married girls 15 years of age and in case of unmarried girls 18 years of age should be attained by them before they can give intelligent consent to cohabitation. A girl after marriage and mixing freely with married girls, can give intelligent consent to cohabitation earlier than unmarried girls.

11. No.

12. Maternal and infantile mortality is chiefly due to early consummation and maternity.

13. Public opinion in upper classes favour further advancement of the age of consent.

14. No.

15. Considerable difficulty is experienced in determining the age of the girl in case under Sections 375-376 Indian Penal Code. To minimise the difficulty the age of consent should be raised as it would be easier to determine the age more or less precisely, of aged girls.

16. The difficulty would be minimised if the age of consent in case of married girls be raised to 15 years and to 18 years in case of unmarried girls.

17. Marital and extra marital offences should be separated and more severe punishments should be prescribed for extra-marital offences.

18. Cases for offences within marital state should be tried in *Camera* and the name of the girl or her description should not be published. Fear of publication prevents many serious cases from coming to the Courts.

19. It is very difficult to suggest safeguards against collusions or improper prosecution. Everything depends on the honesty and capability of the Investigation Officers. Rape cases should invariably be tried with the aid of a Jury.

20. Fixing of higher age of consent (15 in case of married girls and 18 in case of unmarried girls) will be more effective than fixing a minimum age of marriage. This will also be in consonance with public opinion.

21. The evil can be eradicated only by the progress of social reform by means of education and social propaganda. Strengthening of penal laws may to some extent help the gradual removal of the evil, but it won't be effective unless a strong public opinion is formed against the evil.

**Written Statement, dated the 16th August, 1928, of Mr. D. L. SHARMA,
Secretary, All-India Varnashram Sangh, Calcutta.**

1 & 2. The provisions contained in Sections 375 and 376 of the Indian Penal Code might have been of little consequence to the Hindu community but no marked benefit has come out of the same.

3. We are firmly of opinion that there is no substance in the apprehension that minor girls are kidnapped in large numbers every day. So far as we have been

able to find out we think that degraded girls and especially girls of the lower order run away with people and a certain section of people make a mountain of a mole hill of such incidents.

4. In our opinion no fruitful result can come out of any legislation. The best course to protect minor girls, who are of such a weak constitution as cannot cohabit with their husbands would be to educate people in matrimonial matters.

5. Ordinarily Hindu girls menstruate when they are eleven or twelve years of age but this age limit differs according to the locality and the circumstances under which girls are placed, *e.g.*, girls in Bengal and Behar menstruate at the age of 10 while those of the northern parts of India begin to show signs of puberty between the 11th and 12th year of their age.

6. The answer to all the questions are in the negative.

7. So far as we know no consummation takes place with immature brides. It is an imperative duty of a Hindu husband according to the Hindu Shastras to have coitus with his wife when menses appear in her. Any husband not otherwise prevented will be guilty of Vhrunhatya by a breach of this injunction and so he will have to perform the prayaschiya enjoined for the said offence.

8. The custom of second marriage is universally recognised in India. This ceremony is performed after the expiry of two, four, six years of the marriage but in rare cases in which girls attain maturity before they could be married on account of any unavoidable cause this ceremony takes place immediately after the marriage ceremony is over but even in that case no consummation can take place before the expiry of the first year of the marriage.

9. Girls of the age of 13 and 14 are considered as adult and they are capable of bearing child. Offsprings of such marriages are not deformed nor are they in any way weak in physique.

10. The Indian girls can never realise the consequences of giving their consent to people desiring carnal connections with them for the conditions in India are quite different from those of the West.

11. No knowledge. Girls become pregnant when they are fully grown up and their issues are quite healthy.

12. Practically speaking there is no child marriage prevalent in India. Girls are married at the age of 10 to 11 years and the second marriage ceremony takes place when they are fully grown up. Consequently there is absolutely no grounds of fear of the increasing death rate of Hindu children or of their mental or physical deterioration on account of such marriages. Infantile mortality and physical deterioration of Hindu children are due to other causes, *e.g.*, poverty, poor nourishment, and insanitary conditions, etc.

13. The general population of India do not understand what is meant by the age of consent nor do they care to make it their concern. Any law that might be passed in this direction will therefore prove to be utterly fruitless.

14. Hindu society, leaving aside a few reformed people who have renounced the religion and customs of their ancestors, still regards with disapprobation marriages in high life and the reasons for its doing so cannot be lightly passed off. The women folk who are the best judges in such matters disapprove of marriages in advanced years.

15. No knowledge.

16 to 21. In view of what have been said above the answers to these questions become unnecessary.

In conclusion we respectfully submit that the present state of things do not justify any measures being taken but if the Legislature out of any earnestness would pass any enactment regarding the Age of consent it would be a source of many scandals and the desired end will never be achieved. So the said Bill should be dropped.

Written Statement, dated the 16th November, 1928, of Mrs. B. M. BIRLA, Ballygunj, Calcutta.

1. There is much dissatisfaction among the educated and cultured classes with the state of the law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code.

2. Immaturity in mind and physique of the girl necessitates a change by increasing the minimum age limit as it is now.

3. The crimes of seduction and rape are present in our part. The amendment of the law made in 1925 raising the age of consent to 14 years has succeeded in diminishing the rape and seduction cases to some extent, but has not succeeded in preventing them.

Heavy punishment should be inflicted to make the law effective.

4. No; the amendment of 1925 raising the age of consent has not protected married girls against cohabitation with husbands within the prescribed age limit.

A legislation increasing the age of marriage to 16 years should be enacted to make the law effective.

5. At 13 girls generally attain puberty. This differs very little in different castes, communities or classes of society.

6. Cohabitation is somewhat common in our part among all classes of people where child marriage is still in practice—

- (i) before puberty,
- (ii) soon after puberty,
- (iii) before the girl completes 13 years.

No such cases come to Court.

7. Perhaps there is no such religious injunction, so far as I know. Had it been so the state of affairs would have been different.

8. Yes; *Gaona* and *Garbhadan* are performed in our part; *Gaona* has nothing to do with puberty, but *Garbhadhan* is performed after the consummation of marriage, when the girl is going to be a mother.

9. The attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. I think a girl's physical development cannot be considered to be enough before she is at least 18 years of age.

10. I think a girl of 18 can give an intelligent consent to cohabitation with a due realisation of consequences.

11. A girl of 13, a relation of mine, died very shortly after giving birth to a child.

12. Early martenity is responsible for high maternal and infantile mortality.

13. Yes, there has been a development of public opinion in our part among the educated in favour of an extension of the age of consent in marital and extra-marital cases.

14. No mother wants her daughter to be with child at an early age, because she can well realise that it will do a great injury to her health.

15. I think there is some difficulty in determining the age of girls when they are below 16. If the age limit be increased no difficulty will arise.

16. If the age of consent is raised to 16 or 17 there will be no error in determining the age.

17. Extra-marital and marital offences need not be separated. The maximum punishment should be as they are at present.

18. The procedure of trials for offences within and without the marital state may be the same as at present.

19. In marital cases no safeguards are necessary beyond those existing at present.

20. A legislation fixing the minimum age of marriage to 16 is likely to be more effective than the penal legislation fixing a higher age of consent for marital cases. But for non-marital cases the age of consent should be raised to 18 which will be more effective and will be in consonance with public opinion.

21. Progress of social reform both by means of education and social propaganda and strengthening the penal law will be necessary to secure the object in view.

**Written Statement of the Superintendent, Lady DUFFERIN HOSPITAL,
Calcutta, dated the 11th August 1928.**

3. Crimes of rape are not at all infrequent in Calcutta. The 1925 amendment is very little known to the lay public and therefore has had but little effect.

Heavier actual sentences, including corporal punishment, should be given to the man in cases of rape with young girls under 14. The heavier sentences of long imprisonment or transportation for life appear to be rarely, if ever, given by the magistrates.

4. I do not think that the 1925 amendment has been in any way effective. It should be given more general publicity. My patients' husbands appear never to have heard of it. Printed information should be distributed to the heads of households and special leaders, both in the villages and towns. Priest and other who perform marriage ceremonies should be given directions to inform the parents of the parties if they are under-age, before they perform the ceremonies.

5. The age of attaining puberty is about 13. There is very little difference I think in the different castes and communities, provided that the girl is in good health.

6. Cohabitation is usual soon after puberty and it may be before 13. These cases do not come to Court because it has always been the acknowledged practice, and the 1925 amendment is so little known that the people see no reason for altering their customs.

9. No, at puberty, i.e., about 13, the body is far from full development and if children are born within a year of this age, the girl's health is likely to suffer and her full development averted, from the excessive strain at too early an age. It would be far better in every way to put off the consummation of marriage until 16.

10. About 15.

11. Yes, I have had several cases in hospital suffering from tears sustained by attempted coitus, the hæmorrhage from which was so severe that it could only be checked by the insertion of stitches. The girls were very young and the passage not developed enough for married life to be lived.

I have also had a good many cases of rapid tuberculosis in young girls about 16 coming on within a few months of the delivery of their first child, or even during the latter part of the pregnancy. Most of these cases would be fatal within a very few months, and the child too would probably lose its life from debility and artificial feeding. If the strain of pregnancy had not occurred at this early age, the girl might not have contracted the disease, and would have had a chance of surviving.

The children of very young mothers are apt to suffer as the result of ignorance about the right way to bring them up.

12. Yes, certainly. Early marriage cuts short any hope of school life beyond the lowest standards and confines the girl to the house just at the age when she requires most fresh air and exercise for her full physical development. It makes her liable to premature physical exhaustion and much female disease such as pro-lapse from repeated child-birth before 20 years of age.

In Bengal young wives are peculiarly liable to mental disorders in the form of hysterical attacks as the result of too early married life. The children also suffer

because the young mother does not realise the signs of early illness or know the simplest points of mother craft, and so takes any ignorant friends' advice about the treatment of the baby.

13. I think that so little publicity has been given to the 1925 amendment, that very little public opinion has been formed about it. Education is doing more to raise the age of consent in marital cases and the marriage age than anything else.

14. No, I do not think so. They feel tied by racial customs to which they would gladly see an end, if anyone had the courage to speak openly against them in their homes and in society, and if breaking away would not lead to family discord.

15. There is often considerable difficulty in deciding the exact age of a girl in the 13th-15th year.

If the law were amended and the "attainment of puberty" substituted for the exact age, there would be many fewer medico-legal difficulties. There is need for a more careful scientific and medical study of the means of determining the exact age of Indian girls and boys. Most of the present books used as authorities on such questions are from European or American sources and the development of Indian children about puberty proceeds at a rather different rate.

16. If the age of consent was raised to 16, the errors in determining the age would probably be reduced.

20. I think that legislation fixing the minimum age for marriage would be much more efficacious than raising the age of consent for marital cases as it would be easier to observe. There would be much less difficulty in proving cases brought to court and seeing that the law is kept. At present I am sure that many young wives under 13 in Bengal have marital intercourse, but the relatives would seldom give the case away in court if they realised that it is against the law. Marriage being a public ceremony would be much easier to prove.

21. I think that the penal laws should first be strengthened as progress by education and social propaganda will be slow, although it is being made gradually day by day under the existing conditions. At the same time the means of giving education to girls up to the age of 14 must be immediately extended so that schools may be in existence for those who are growing up and whose marriage is to be postponed. Teachers with training will also be required in large numbers.

Written Statement of Mr. J. C. MAZUMDAR, Deputy Magistrate, Darjeeling, Bengal, dated the 7th August 1928.

1. Except amongst a very limited section of the intellectual classes the law in its present state does not appear to be known either to common people or to the majority of educated people in the country: I speak for Bengal, having worked for a brief period as a lawyer in criminal courts and as Magistrate in various parts of Bengal for over 15 years. Even five per cent. of our practising B.Ls. or M.A., B.Ls. in Bengal do not know or care to know the "Age of Consent." No question of dissatisfaction with the present law can therefore arise, so far as 95 per cent. of the population in Bengal is concerned. It is only a few gentlemen with extreme views about social reform who have created the present agitation but they will not be able to substantiate their position by support of "popular opinion" behind them. The zeal however commendable betrays often ignorance of moral life in the life.

2. The only justification for making an advance on the present law is that this may *indirectly* affect the present marriage system and provide girls with greater opportunities of education, free them considerably from premature imposition of domestic responsibilities—heavy responsibilities of wife and mother which too often crush their vitality at the very start of life: any advance on the present law will help our sisters in entering life when they are physically or mentally or intellectually prepared to bear their heavy responsibilities of motherhood.

But as regards circumstances in support of retaining the present law, much can be also urged. In the first place, the cause of social reform is better advanced

by educating public opinion and seldom by the penal code. For instance, the laws against sodomy never checks it as effectively as the humane influence of married life. Penalising early marriage may lead indirectly to increase incestuous relationship whenever opportunities offer. Since 1925, no fresh case has been made out for any change in the law. Matters remain exactly where they were in 1925 and what has progressed is due solely to increased public enlightenment—not the result of amending the law in 1925. Legislation is partly helpful and in its present form it is enough.

3. No frequent cases of rape in Bengal nor seduction of young girls. Seduction of grown-up widows between 16 to 30 are often brought to notice in East Bengal.

These cases have nothing to do with the law or any supposed defect in the law. The amendment of 1925 has not in any way affected figures of this crime most prevalent in Mymensing District in Bengal. Improper seduction is prevalent round about Calcutta in view of the lure of vice common to a prosperous city—affording fewer opportunities for homelife to a vast portion of the population. The amendment of 1925 indirectly aroused public opinion and made it more sensible to the dangers arising from defects in our social system. It thus helped in bringing to light cases likely to be hushed up by unscrupulous people for gain or by a corrupt police. To make the present law more effective better vigilance on the part of social reform organizations, careful selection of educated jurors and effective police investigations should be ensured. The police in this country or the District Magistrate do not take a 20th part of the interest as we find that was taken in the recent English case over Miss Savidge, the typist: the introduction of women jurors for such cases in presidency town would be of some value.

4. It has not affected the position which improved owing to other forces than amended legislation.

Clause 2 has really brought about the results in columns 1 and 3 though indirectly.

The really effective measure is that of stimulating public opinion by all means: legislation on this subject will more or less remain a dead letter without enlightened public opinion.

5. The usual age varies between 12 to 15 amongst different classes of society. "Caste" has not much to do with it; it is more the result of environments and the influence of surroundings.

6. (1) Not so common nor unusual.

(2) very common and generally the rule.

(3) Not uncommon.

Very rarely do these cases come to court.

7. More due to social and less to religious injunction. No authority except the unwritten law of society that transgressors shall be hounded. There is good Shastric injunction—the Sloka that "a father not giving his daughter in marriage before her puberty drinks the monthly blood of her daughter". Few know this, no body cares for this so much as the unwritten law of society. The Moslems marry their daughters early before puberty as a matter of convenience—no question of "Religious sanction" arises.

The surest penalty for breach of the social injunction is that girls of advanced age find no husbands or find one with insuperable difficulties.

8. Yes—amongst Hindus. They coincide and are synchronous with the attainment of puberty or soon after it.

9. Puberty is not an event, it is a slow process of development. After all the symptoms of puberty appear. Consummation should not be delayed simply on sentimental grounds. The appearance of the menses is no sufficient indication of physical maturity by itself. Occasional consummation cannot harm the girl. Nor is this preventible simply by legislation. Generally speaking 15 to 16 may

be taken as the earliest period permissible for motherhood. That does not imply that marriages or cohabitation earlier than that should be penalized. The marriage of a man at 25 does not prevent sexual abuses which from 'mere physique point of view' are perhaps worse than early consummation of marriage. The same apply to girls. From economic and other grounds the age is being steadily pushed on. Legislation will not help matters much. The cry has come too late in the day.

10. Fourteen to fifteen, "intelligent-consent with due realization of consequences" will perhaps imply an age after the flash of youth is past. For all practical purposes fourteen to fifteen will suit best. Marriage at an year earlier will not harm the parties very much in this country.

11. Direct injury is not all at marked. The injury is usually marked in its generally enfeebling effects on the progeny and also on premature advent of old age of the girls. Frequent child-bearing between early years before twenty undoubtedly cripples a woman before her time. A grandmother at thirty is not pleasant prospect particularly in a poor country where a woman's joys and sorrows are centred entirely within the walls of family life. It is forgotten that among Europeans 'contraception' and abortion are much too common. It is significant however that in Bengal particularly East Bengal where the Moslems marry very early possess excellent physique and robust health in spite of polygamy widely prevalent whereas amongst advanced Brahmo community, who often marry girls between 20 to 35, the progeny or the mother is no more vigorous or healthy than among sickly Hindu Brahmins with the silliest custom of giving girls in marriage before they are ten. It is forgotten that in this country marriage does not necessarily or closely follow a course of 'honey-moon'.

Yes, but not a direct result of early marriage. The high mortality results more from economic effects of having more children produced in the family than the quantity of food supply. This is a pernicious "city life" like that of Calcutta or gross ignorance of simple laws of health that accounts for deaths.

As regards intellectual progress, it is also noticeable that it is the too intellectual life that the middle class man leads and too little of "physical life" which is the real root of the poison. All the evil effects in question 12 result from ignorance of laws of sanitation and other common economic causes. Of course, early marriage is another root cause of economic distress, and therefore indirectly responsible for infant mortality and general mortality.

13. It has little effect on public opinion. Existing law calls for no change. It is for social reformers to stop such evils and not the *unreliable police Daroga*.

14. Yes, they do in this sense that they dislike late marriages among girls. They would never like the age to go beyond 15.

15 and 16. The age of girls between 13 to 15 is mainly a point for the doctor and much depends on the honesty and fairness of the doctor. It would be absurd to raise the age to 16. A dishonest police complicate matters. The difficulties must remain as they are and they are practically insoluble.

May be raised to 14 with regard to strangers but with husbands the law needs no change.

17. The punishments must remain as they are. Simple imprisonment and courts' discretion should be given wider scope when the husband is the offender.

18. Procedure as regards husband offenders must be a trial by jurors of his own class.

19. Liberal education of women folk and improved ideas of social and marital relations. No adequate safeguards are *possible* under present system. Even in Europe and Great Britain sexual relationship with child girls are not unknown.

20. Legislation will not care the evil nor effectively mitigate the 'evil. Legislation should not be allowed to interfere in this matter. More than what has been already allowed. Legislators forget that man is after all an "animal first" and a "Rishi last".

21. The surest remedy is progress of education and social reform. Better understanding of sexual problems improved standard of living, rational system of

living and marriage. Legislation like a 'medical pill' cannot strengthen the social well-being of the community. Just as the individual body improves not by medicine but by better system of living, so with this fabric of social structure be better strengthened, not by the aid of legislation but by strength arising from better social consciousness.

Answers to the questionnaire by the Age of Consent Committee.

1. Yes, but only among a section of the educated and advanced community. Not very pronounced though.

2. The circumstances justifying an advance on the present law are.—

The general deterioration in the health and physique of the people, infant mortality, early child-bearing.

3. Yes, specially in East Bengal.

Not appreciably.

Spread of education, social and moral uplift by means of intensive propaganda.

4. There has been a general tendency to raise the age of marriageable girls among the educated community, but that is to some extent due to economic causes. The change in the law in 1925 has not effected any material change in the situation in general. To make it effective, I would propose that the age of consent should be raised to 14 years and that a vigilant enforcement of the law maintained for a time. What, however, will be really effective is to educate public opinion by intensive social propaganda, and to spread education among the people.

5. Generally thirteen years.

6. (1) No.

(2) Yes.

(3) Not generally.

Such cases seldom come to court.

7. No.

8. 'Gaona' ceremony is not known in Bengal. In case of girls married before attaining puberty, a ceremony known as 'Dwitiya Bibaha' (or second marriage) is performed after the girl attains puberty and before consummation.

9. I do not think so. Not till the girl attains at least sixteen years of age.

10. Eighteen years.

11. I have not come across any.

12. Yes. I attribute the general deterioration in the health, physique and intellectual development of the people to this evil.

13. Yes, but among the educated and advanced section.

14. Yes, generally.

15. I have not experienced any. This is a question for medical men to answer.

16. I think so.

17. Yes. Marital offences may be dealt with either by the District Magistrate or some experienced first class Magistrate specially empowered. Transportation or 10 years' rigorous imprisonment for extra-marital and two years for marital offence.

18. Yes. The one triable by the Court of Sessions and the other by Magistrates as stated above.

19. I have suggested that only District Magistrates and experienced Magistrates specially empowered should try these cases. They can be relied upon to go to bottom of each case, and deal adequately with it.

20. Legislation fixing the minimum age of marriage, for girls, would, I think, be more effective, but this will not affect the extra-marital cases. Fixing a higher age of consent would probably be more in consonance with public opinion in this part of the country.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda. That, though slow, will be more effective.

**Voluntary Statement of Rasacharya Kaviraj BHUDEB MUKHERJI,
M.A., Calcutta, dated 1st July 1928.**

I beg to submit the following points for consideration of your Committee :—

(1) I am an orthodox Hindu and share the views entertained by all the orthodox Hindus with regard to the age of marriage of their girls, with this difference that whereas the majority of the orthodox Hindus regard the existing practices as the outcome of religious injunctions only. I am prepared to prove that these religious injunctions are not mere dogmatic assertions of the ancient Hindu sages but are truths based on hygienic and life-preserving principles. In support of this, I beg to reproduce here a few passages from books on Ayurveda :—

- (1) Menstruation commences generally at the age of twelve and terminates at the age of 50 or so.
- (2) A girl who has attained puberty naturally hankers after sexual gratification.
- (3) If she is denied the opportunity of association with man, for a long time after she attains the age of puberty, she is called a "Dagdha Shukra" woman, that is, a woman whose semen has been burnt. Such a woman develops all sorts of venereal and uterine diseases, obstinate fever, consumption, and even insanity.
- (4) A girl should therefore be allowed with reasonable restraint to cohabit with her husband as soon as she attains the age of puberty.
- (5) A woman from the time of her puberty to the age of 16 is called a *bālā*. She is a *taruni* up to the age of 32. She is called *praudhā* from the age of 32 to 50. She is *vridhā* after 50.
- (6) Intercourse with a *bālā* increases strength and longevity, that with a *taruni* is followed by loss of strength; and that with a *praudhā* results in senile decay. A *vridhā* is unfit for sexual indulgence.

These are the views expressed by the ancient Hindu sages who compiled books on Indian medicine—a system which even in its present state of awful degradation, is incomparably superior to all other systems of medicine known to the world. This is no exaggeration. The truth of my statement is at least partially admitted by many a savant of Europe and America who have studied my encyclopaedic publication on Hindu Chemistry, entitled *Rasa-Jala-Nidhi* (or Ocean of Indian Chemistry and Alchemy). Dr. Gour and the other gentleman are not true Hindus. They have very little acquaintance with ancient Hindu culture. Otherwise they would not have ventured to ruin the Hindu Society by their action which is quite uncalled for and ill advised.

Apart from the testimonies borne by the books on Ayurveda and religious Scriptures of the Hindus to the desirability of marriage before puberty, I would ask you to take into consideration the views expressed by the modern sociologists on the evils of romantic marriages which are the natural consequences of a system which does not allow marriage before puberty. Let me quote here a few lines only from Giddings' Sociology :—

"Degeneration manifests itself in the protean forms of suicide, insanity, crime and vice which most abound in the highest civilizations, where the tension of life is extreme.....The unstable organization of the romantic family offers little resistance to the disintegrating influence of morbid emotion and insane ambition: when marriage is viewed as a convenience or pleasure, legal obstacles to its dissolution will not long be tolerated by a community of irritable, sentimental and egoistic men and women who have found life disappointing. Divorces have been rapidly multiplying throughout Europe and the United States during the past thirty years". See Giddings' Sociology—Demogenic Association.

In view of all these facts, I would submit to the Government of India, through your Committee, that no case has been made out to interfere with the religious and social customs of the Hindus by enacting the bills framed by Dr. Gour and Mr. H. B. Sarda, who may be Hindus but are denationalised to the extreme and have no acquaintance with the ancient Hindu culture. Romantic marriage, i.e., marriage which is arranged by the bride herself, has proved a failure in the west, as will be evident from the innumerable cases of divorce and elopement. Let not the Government encourage the institution of cases like the one in which a girl named Chabibai was a party (a case decided in Bombay a few years ago).

Even supposing for argument's sake that prohibition of sexual intercourse at an early age is absolutely necessary for the salvation of the Indians, I should like to put to the authors of these bills a question : what is marriage after all ? A Hindu marriage is only a religious ceremony which does not mean an agreement on the part of the bride and bride groom to live immediately a life of sexual enjoyment. Far from it. These are facts which are not unknown to the members of your Committee and to the Government.

The majority of the Bengali Hindus share with me the views expressed above, but the protest to the bills is not so vehement in Bengal on account of opposition by some influential but interesting persons who are not Hindus proper. This is the reason why I think it advisable to submit this note to your Committee.

Written Statement, of Sir BROJENDRA LALL MITTER, Kt., Advocate-General, Bengal, Calcutta, dated the 3rd August 1928.

1. My experience is mainly confined to the town of Calcutta. There does not seem to be any decided public opinion, one way or the other, on the law of the age of consent, except among the limited circle of social reformers. The people in general are quite indifferent and in most cases unacquainted with the provisions of the law. Crimes of seduction and rape are scarce in Calcutta. The change in the law made in 1925 is not generally known and has made no appreciable difference amongst the people concerned. In Calcutta, the marriageable age of girls is, for economic and other reasons, on the rise. Amongst the educated classes, marriage of girls under 14 is steadily diminishing in number. Consummation of marriage has to my knowledge, no reference to any religious injunction. The prevailing idea is against cohabitation with immature girls. There is a certain amount of traffic in immature girls and various rescue homes and the Police deal with them. I do not think any change in the law, which is intended for the normal citizens, will affect such traffic to any appreciable extent, except that a proportion of these girls will probably get some measure of protection. Women in this part of the country do not favour early consummation of marriage for their children. Consummation follows closely upon marriage and, as I have said above, the marriageable age is on the rise. As cases bearing on this subject are few and far between in this part of the country, I am unable to express any opinion on the procedure of trials or the adequacy of punishment.

2. In my opinion, penal legislation fixing the minimum age of marriage is likely to be more effective in this branch of social reform than by raising the age of consent.

3. I am in favour of the legislature taking a lead in this matter, instead of leaving the progress of this particular social reform to time and the spread of education or social propaganda. Social propaganda is useless, and the spread of education is slow. I think public opinion is not unfavourable to interference by the legislature. The agitation of the orthodox section of the people is generally artificial. The people in general are indifferent, and would rather follow the lead of the legislature than that of orthodoxy.

**Written Statement, of Khan Bahadur NASIRUDDIN AHMED, M.L.A.,
Barisal, Bengal, dated the 10th August 1923.**

1. The present state of the law as to age of consent as contained in sections 375 and 376 of the Indian Penal Code appears to be rather unsatisfactory as the matter is of vital importance affecting not only the girl personally but the future progeny of the nation. No consent should be considered valid unless it is given by a person who has reached the age of discretion which cannot be below 15 years even in this country.

2. The age of consent should be raised to 16 years in non-marital cases but in marital cases it may not be raised beyond 13 years as at present until the maximum age of marriage for a girl be fixed by law. Because if you allow a married couple, the wife being below sixteen but above thirteen to live together, as they often do, it cannot be expected that they would always be able to exercise self restraint in such matters. Hence the better policy would be to fix the minimum age of marriage at 14 years and then raise the age of consent as between husband and wife to 14 years.

3. There are occasional cases of seduction or rape in our part of the country. I do not think that raising the age of consent to 14 has succeeded in appreciably reducing cases of seduction or rape outside the marital state as the majority of such cases occur in the case of girls who are above 14 years of age. It would be more effective for the purpose of punishing the offenders if the age of consent be raised to 16 years in non-marital cases.

4. The raising of the age of consent within the marital state to 13 years does not seem to have been effective in protecting married girls against cohabitation with husbands within the prescribed age limit by postponing the consummation of marriage, though it might have to a certain extent stimulated public opinion in that direction and put off marriage beyond 13 in a small number of cases among the educated classes.

To make it effective the minimum age of marriage should be fixed at 14 years as proposed by the Select Committee on Sarda's bill.

5. The usual age at which girls attain puberty in our part of the country is between 12 to 14 years. There does not appear to be much difference in this matter between different communities. In the case of married girls puberty is often hastened.

6. Cohabitation is common within the marital state soon after puberty which may happen in some cases before the girl completes 13 years. Cohabitation must be rare before puberty.

Unless there be any serious injury, no such case ever came to light.

7. The early consummation of marriage soon after puberty is partly due to religious injunction among the Hindus and partly to custom. I cannot quote any religious injunction. Manu's injunctions on the matter are too well known to mention.

8. Garbhadhan ceremony is usually performed amongst the Hindus only soon after puberty and is anterior to consummation of marriage. No such ceremony amongst the Mussalmans.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. At least two years after puberty a girl may be considered physically fit for child-bearing.

10. When a girl is at least 16 years of age she may be considered competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. I have no such definite experience but I have known cases in which premature child-bearing led to the death of the mother or the child or both.

12. I consider consummation and early maternity responsible for high maternal and infantile mortality, as well as to intellectual and physical deterioration of the people.

13. Public opinion in favour of extension of the age of consent in extra-marital cases appears to be really general. In marital cases, it considers the fixing of the minimum age of marriage to be more effective.

14. As far as I know women in our part of the country now-a-days do not favour early consummation of marriage for their children. Only some ignorant women may think so.

15. There are always difficulties in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code. These difficulties may be minimised by keeping correct public register of births. The present registers do not seem to be often accurately kept.

16. I cannot say.

17. Certainly extra-marital and marital offences should be different. As regards marital offences, the maximum punishment need not be more than six months imprisonment or fine or both. As regards extra-marital offence the maximum should be three years imprisonment and fine when there is consent in both cases given by a girl who has attained puberty but not reached the age of consent fixed by law.

18. The present procedure for trial of such cases seems to be fairly satisfactory.

19. The safeguards provided in sections 8 and 10 of Mr. Sarda's bill as amended by the Select Committee appear to be adequate in marital cases. In non-marital cases no special safeguards are necessary.

20. I consider as stated above that in marital cases legislation fixing the minimum age of marriage would be more effective than penal legislation fixing a higher age of consent. As prosecution in marital cases must not only be very rare and difficult to prove but must lead to conjugal unhappiness and separation of husband and wife. Thus the remedy would very often be worse than the disease. Fixing the minimum age of marriage appears to be more in consonance with intelligent public opinion.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view and not leave it to the progress of social reform by means of education and social propaganda, as in this country where the mass of the people is steeped in dense ignorance, illiteracy and superstition, such social reform would require a very very long time to achieve this object, while our progeny would go on deteriorating to an alarming extent. The recent case of Sati in U. P. should be an eye-opener to all as to the tenacity with which most of the Indians cling to an old custom, however irrational and prejudicial it may be.

If so required by the Committee I am agreeable to be examined orally.

Written Statement of Sm. MOHINI DEVI, 1, Anthonybagan Lane, Calcutta, dated the 19th December 1928.

1. Yes, there is much dissatisfaction with the state of the law relating to the age of consent in the country especially amongst the cultured and educated societies.

2. I do not support and therefore cannot find any circumstance to justify the retention of the law as it is but I advocate the cause of making an advancement on the present law. Gradually with the advancement of social and educational conditions of the people they are becoming much dissatisfied with the present state of law. The law as it is does not help as required by the present economic and social condition, neither does it promise to help in future. The law being quite contradictory in respect of economic condition. The age of consent though raised to fourteen years has not been able to protect the girls.

3. In Bengal, especially in the Eastern part of the province cases of rape and seduction are of daily occurrence.

Amendment of the law in 1925 by raising the age of consent has not succeeded even in the least.

My opinion is to punish the offenders in minor cases even very severely and to make the punishment well circulated in the locality for prevention of repetition of the crime.

4. Not even in the least.

If the age of consent be raised to 16 years or more, there can be some partial solution of the problem, I think in cases of marital state. If the marriage be performed after 15 years of age then girls are never required to keep off cohabitation after marriage.

5. Generally it is experienced between 13 to 14 years of age. It differs in different castes and communities in many cases. The main cause of such difference is the Economic condition of the group. The educated class owing to their social and family circumstances are engaged in education and other affairs which serve some purpose in earlier age to prevent the attainment of puberty. They attain it at a later age say 15 to 16 years generally. Whereas labourers and low class people who sent their girls in marriage at an early age generally attain puberty at the age of 12 to 14 years due to stimulation and cohabitation from the early age. Primarily the physical state of the girl is responsible in many cases.

6. Cohabitation is common. It is not discouraged in lower-classes, not even in higher and educated classes if the marriage is performed at an earlier age even.

(1) No.

(2) No.

(3) No.

7. No.

8. The Gaona or Garbhadan ceremony is almost extinct now-a-days save and except in some orthodox families who are well-to-do. The educated higher class people no longer observe it. Owing to the deplorable economic condition the labour classes even do not observe it.

9. No, at the age of sixteen, i.e., about two years after the attainment of puberty a girl's physical development is said to be fit for consummation without injury to her health and future generation.

10. At the age of sixteen and not earlier.

11. I cannot give the details but I remember there was a case of this nature in Jessore (Bengal) some twenty years back.

12. Early consummation and early maternity is not so much responsible for high maternal and infant mortality as the economic condition of the people is. The whole country is terribly suffering from economic distress and is in dire ignorance of the laws of health and sanitation. This ignorance of the masses affect the intellectual development and the economically distressed condition destroys all the chances of a good health and cheery spirits.

13. There has been a very strong public opinion in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925. The cry is almost general.

14. No.

15. Everywhere in every case there has not been any definite determination of the age. The medical opinion is the final. To remove these difficulties I suggest first of all—

(1) The enhancement of the age of consent and strict enforcement of the law.

(2) Compulsory birth register receipts should be kept by the guardian from the local authorised body to issue the same.

(3) Horoscopes should be kept in every case. False horoscopes should be discouraged.

16. The margin of error will be materially reduced if it is raised to above fourteen say 15 to 16 years.

17. No. In every case the punishment should be severe and the term should extend to not less than 7 years but more in cases where necessary. Even in minor cases the punishment should be exemplary.

18. There ought to be some difference in the procedure of trials in both the cases. *Purdah* system should be observed and trials should be held in Camera otherwise cases will never come before the open courts even in cases of serious injuries on the person of the girl. Simply for keeping the whole affair shut from the public eyes the female sex can undertake any amount of hardship on themselves. Were trials in Camera possible, the number of cases would have much increased and lots of offenders would have been victimised.

19. No.

20. Penal legislation fixing a higher age of consent will have some effect but legislation fixing the minimum age of marriage and enforcement of the same law should have a sure and good result in all respects. Both of these will be in consonance with the public opinion.

21. First of all penal legislation is of utmost necessity. Without enforcement of law no amount of social and educational reform will serve any immediate purpose. Strict enforcement of the law by increasing the age of consent in marital and extra-marital cases should be taken up first. Then social reform by means of social propaganda and education should be taken up.

Written Statement, dated the 20th December 1928, of Mr. DURGA PRASAD KHAITAN, Solicitor, Calcutta.

1. There is dissatisfaction amongst the English knowing section only. The law as contained in the Code is not yet sufficiently known to others and no dissatisfaction is expressed by them.

2. In my opinion the minimum marriageable age of girls should be raised to 13. In an intra-marital case there ought to be no age of consent and in extra-marital case the age should be raised to 18.

3. It is very frequent in Calcutta and the rest of Bengal. The amendment has had no effect, in as much as the law is not sufficiently known amongst the masses.

4. No. The amendment has not been effective much. It has to a little extent stimulated public opinion and helped arguments in putting off marriage beyond 13. The real effective step would be to fix the minimum marriageable age of girls at 13.

5. The Marwari girls living in Bengal attain puberty between 12 and 13. The girls living in Jaipur attain puberty at about the age of 13.

6. Cohabitation before puberty is not found common. Cohabitation soon after puberty is very common. As puberty takes place between the ages of 12 and 13 cohabitation is common between those ages. Such infringement of law hardly comes to Court as the matter is kept secret.

7. Attributable not to religious injunction but to wrong religious prejudices and social customs. I on my part would like not to base these social practices upon religious injunction at all. These practices ought to be based upon sound reasonings and medical requirements.

8. Yes. "Gaona" is usually performed in my part of the country. There is no "Garbhadan" ceremony in my community. In most cases "Gaona" is anterior to the consummation of marriage but not that social practice is very much violated. "Gaona" is generally performed after the attainment of puberty, but very soon after it—say at or about the age of 13.

9. No. The girl's physical development can only be considered to be enough after the age of 16.

10. At the age of 18.

11. In my community the practice of early consummation has resulted in early deaths of most of the young girls. In fact, a disease has now recently developed which results in the softening of the bones a peculiar disease which greatly affects the health of the girls. In such cases the disease prevents healthy and normal delivery. The longevity of the married couple and their progeny is very much lowered due to early marriage and consummation.

12. Yes. As stated above.

13. Yes. The public opinion is gradually favouring postponement of early marriages. For the last 10 years resolutions have been passed at the annual conferences of the All-India Agarwal Mahasabha, condemning early marriages. Such resolutions have been passed unanimously. The minimum marriageable age passed by the Agarwalla Mahasabha is 12 for the girls and 16 for the boys. My opinion is that the marriage of boys at an age below 18 ought to be an offence.

14. Uneducated women treat the consummation of marriage very lightly. They are not sufficiently educated to understand the evil effects of early consummation. The social reform propaganda has done a lot of good.

15. Difficulty must be experienced by the very nature of it. Compulsory registration of births is the only effective remedy.

16. No.

17. I do not regard consummation after marriage as an offence but consummation extra-marital should be an offence if it be below the age of 18. No punishment for intra-marital cases should be inflicted.

18. The question does not arise having regard to the opinion given above.

19. If possible there ought to be a vigilance Committee in towns to rescue the minor girls and to punish the offenders.

20. As I have said above there ought to be no age of consent in intra-marital cases and therefore cohabitation between husband and wife ought not to be an offence, particularly if the minimum marriageable age is raised to 14. Such measures should also be in consonance with the public opinion in my part of the country.

21. Personally, I am of opinion that the minimum marriageable age for the girls should be fixed at 13. The rest should be left to the social propaganda.

Written Statement of Mr. H. N. BHATTACHARJA, Advocate, High Court, Calcutta, President, Sylhet Vaidic Brahmin Samity, 73, Harrison Road, Calcutta, dated the 20th December 1928.

1. The law contained in Section 375, I. P. C., is quite unsatisfactory. Every act of sexual connection, against the will of a woman or with her consent, should be made punishable, irrespective of the age of the woman concerned, this rule applying only to extra-nuptial sexual intercourse.

As regards sexual intercourse between a man and his wife, the age of such intercourse should be fixed at 25, when the body of the girl concerned is fully developed.

The sexual connection between a man and his wife at immature age has no reference to the system of early marriage, prescribed in the Hindu Shastras. The system of early marriage, should not be interfered with. At the same time, immature sexual intercourses should be prevented. This can be done in the following way :

Legislation should be undertaken, directing the father and father-in-law of the girl married in tender years, not to allow sexual intercourses, before the girl attains the age of 25. The husband should be also placed under penal liability, in case, he forcibly has sexual connection with his wife, below the age of 25 years.

2. *Vide* Answer to Question 1.

3. The crimes of seduction and rape are very common in our part of the country. The law of 1925 has had no effect whatever in preventing these crimes. No law whatever, however stringent it may be, can prevent these crimes absolutely. The only legislation which can be undertaken, is for the total prohibition of prostitution or commercialised vice. To make such legislation effective, sexual intercourse outside married life should be strictly prohibited. Raising the age or lowering the age mean nothing more than allowing a vice to be adopted a few years later or a few years' earlier. The sacred hand of the Indian Legislature should not be defiled by the foul touch of a legislation, intended for altering the moment, or method of committing a vice, that is eating into the very core of humanity. Either allow the vice to continue in full vigor or exterminate it altogether. There is no midway between these two courses.

To make the law, preventing sexual intercourse, outside married life, effective marriage registration should be made compulsory amongst all classes of people. To make the law, preventing sexual intercourse in married life below the age of 25, effective birth registration should be made compulsory among all classes of people. Should any man happen to conceal a birth or marriage, his punishment should be very severe.

4. (1), (2) and (3). The law of 1925 has had no effect whatever.

As regards the steps to be taken, please see the answer to question 3 above.

5. Nine to ten years among Brahmins and high caste Hindus. Among the other classes, the age varies between 12 to 20 years.

6 (1), (2) and (3). It is impossible to collect accurate information in matters like these. Any man proposing to give correct evidence in this matter, must be an expert in dishonesty.

These cases, if there be any, do not come to court, when the parties are Hindus.

7. Under the British raj, people have hardly any tendency to look to the Shastras for regulating their daily life actions. So I do not think it would be of any use, answering this question.

8. The "Garbhadan" ceremony is performed after the first appearance of "menstruation".

9. *Vide* answer to question 1.

10. At the age of 25, if properly educated. If not properly educated, at no age whatever.

11. The entire havoc of infant and female mortality in Bengal is due to immature cohabitation. If any man has a grain of humanity in him, he should come to the rescue of these helpless young girls, who do not know how to protect themselves against their demoralised husbands, who are lost to all except animality. Cases are too numerous to be cited.

12. The question is ambiguous.

13. The only public opinion existing is that no law should be passed dealing with any question relating to a Hindu marriage. This opinion is quite general.

14. Old woman want to have their grand-children in their knees and hence they send their young daughters-in-law to their sons in very tender years.

15. Difficulty is always experienced. Birth registration should be made compulsory.

16. No.

17. No. But the punishment should be different. The maximum punishment for a marital offence should be 10 years' rigorous imprisonment with or without fine. The maximum punishment for a non-marital offence should be capital punishment or transportation for life, according to the nature of the case to be dealt with. The nature of the outrage which are being committed upon women in Bengal and other parts of India now-a-days, persuade me to suggest capital punishment for such offences.

18. No.

19. These safeguards are to be discovered by the application of the general principles of law to each case according to its circumstances.

20. *Vide* answer to questions 3 and 13.

21. To secure the object in view, the following measures should be undertaken—

- (a) The penal law should be made very strict (*vide* answer to question 17).
- (b) Birth registration and marriage registration should be made compulsory.
- (c) Elementary medical and legal education, with special reference to sexual matters, should be made compulsory, both for boys and for girls.
- (d) Prostitution should be abolished.
- (e) Ale houses should be abolished.
- (f) Slaughter of animals and public sale of meat should be prohibited.
- (g) Public sale of all articles of food and drink like wine, meat and eggs should be prohibited.

These measures are all strict Brahminical injunction. Success is guaranteed, if these measures be undertaken.

**Written Statement of HAJI CHOWDHRY MOHD. ISMAEL KHAN,
M.L.A., Barisal (Bengal), dated 20th December 1928.**

1. There is hardly any dissatisfaction but if the people in general knew the provision of the section restricting husbands from sexual intercourse with their wives, they could have expressed their dissatisfaction by constitutional agitation. Fortunately however the provisions of the section are very seldom applied and so people are not aware of them at all.

2. (1) The present state of illiteracy in the country make it imperative not to attempt any further advance on the present law, so far as it relates to married couples as it may lead to disastrous consequences. It is often forgotten that the age of consent is being attempted to be further revised at the instance of a few highly cultured people of the country who represent not more than 5 per cent. of the population, but the law aimed at, will apply not only to those 5 per cent. but to 95 per cent. of the illiterate mass as well. The cultured people who want further raising of age of consent even in case of married couples, look at the question from their standard and entirely forget the illiteracy of the mass, their environments and the temptation to which they are open. The children of the cultivators who tend the lower animals from their childhood, get the sexual appetite highly developed even before their attaining puberty, and their opportunities of satisfying such appetite in immoral or unnatural ways are many and various. In the case of such people to further raise the age of consent in the case of married wives, will mean leaving the girl wife to various sorts of temptations by refusing to allow her to satisfy her sexual appetite legitimately. Further raising the age of consent in such cases will certainly mean more enticement and rape cases will frequently occur. Among people of the lower class (cultivators) giving away of a girl in marriage means giving her protection against allurements of illicit intercourse. The husband jealously guards the girl wife's morals and the men of loose morals in the neighbourhood do not dare approach a girl after she is married, unless she had already become of loose character. But if the marriage be delayed or sexual connection with the husband be prevented, the result will be that the girl will fall a prey to allurements and will be ruined before she knew the consequences of her actions. It will be a great disaster in the present state of the country, if the welfare of 95 per cent. of the population are not taken into account in determining the question of further raising of age, and the age is raised merely because in the more advanced countries under entirely different environments, the age has been raised and because a few

people of advanced ideas in this country look at things from their standard and want the law to be changed. The legislature should know that 99·9 per cent. of the people accused of offences under Sections 375 and 376 come from the common class of people and not from men of culture and so in amending the section the condition and environment of those people should be looked at and the law should be framed that it may be suitable to them and may not injure them in any other way. The law as it is, has made more than sufficient advance already and no attempt should, in my opinion, be made to make a further advance on the present law just now. The cultured people should look to social reforms for further improving the position.

In case of intercourse outside marital tie, the age should certainly be raised, and I would recommend it to be raised to 18 if not to 21, as in such cases the question of protection from husband, etc., does not arise.

3. Crimes of seduction and rape are not more frequently in my district than in any other place of the Province. The amendment of the law has had no perceptible effect. The age in non-marital cases should be further raised to 18 if not 21.

4. People are hardly aware of the amendment and offences against husbands are fortunately never enquired into or reported, otherwise the disastrous effect of raising the age of 13 would have been apparent—girl wives being prevented from intercourse with husbands would have fallen a prey to allurements of immoral neighbours and seduction and rape would have increased substantially.

5. Girls generally attain puberty at 12. Among well-to-do people they sometime attain puberty at 11 and among people of poorer class sometime 13.

6. (1) and (2) Among higher class cohabitation is very unusual before puberty, but in the common class it is not so.

(3) People have little regard of age. They have however some regard of the fact of puberty.

Within marital tie such cases are neither enquired into nor reported to any body.

7. Among the Mahomedans attainment of puberty by the girl irrespective of her age is considered to be a sufficient indication of her capacity for cohabitation.

8. No, but satocha or shadh is celebrated 7 months after the conception.

9. I consider attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage among common class of people who are generally physically more strong than the educated class. In the case of cultured people who are generally physically weaker 13 is perhaps the proper age for consummation of marriage.

10. A girl of common class people with no education can hardly be expected to be ever able to give an intelligent consent to cohabitation with a due realisation of consequences. An educated girl can give such consent possibly at 15.

11. Nil.

12. No. High infantile and maternal mortality among common class people is due to economic causes, e.g., malnutrition. Among the educated class high infantile and maternal mortality is due to lack of physical exercise and artificial way of living.

13. Ordinary people are not even aware of the amendments of 1925 except only legal practitioners.

14. Women favour consummation of marriage just after attainment of puberty. Delay in consummation after puberty is considered sinful.

15. Difficulties must always be felt about determination of age as there is no scientific method of positively determining the exact age. In my opinion puberty should be the standard and not artificial age.

16. I do not know.

17. In my opinion marital offences should remain only in the Code as they actually are, and social reform should be trusted for reducing such offence.

18. I would not like a marital offence to be at all tried in court unless it results in a physical hurt to the girl. In the latter case also it should be tried in camera and the maximum punishment should be that to which the accused would have been liable for the offence of hurt.

19. I do not know.

20. I like neither but I think the latter would be more effective although I would resent it as a limitation on my free will.

21. I would rely on the progress of social reforms only and Government should undertake propaganda work in this line.

**Written Statement, dated the 1st December 1928, of Babu C.
MUKHERJEE, M.A., Sub-Divisional Officer, Feni.**

1. There is almost universal dissatisfaction with the state of the law as to the age of consent as contained in Sections 375 and 376, I. P. C.

2. (1) The retention of the present law of consent has no justification for it. A girl of 14 is almost a child in matters of this kind born in ignorance and easily seduced she can not understand what she is consenting to.

2. Under the Hindu law a female and a minor male are placed under the same category. With spread of education amongst females they may have the same legal status as a male but the time is not yet come. Where for countless centuries the females have been made to rely absolutely on male relatives, instinct prompt them to trust a male acquaintance irrespective of consequences. It is therefore not difficult for the seducer to secure consent. If unmarried, discovery makes her an outcaste if a Hindu. If of another community, her prospects of marriage are gone for ever. In either case she becomes an object of shame. Suicide is resorted to by the more strongminded ones and a life of shame by the others. The male offenders escape with impunity. The law can not touch them as she was a consenting party. There is no check on males in consequence. If married, she is abandoned by the husband. Divorce proceedings are resorted to where the law would permit such a course. If a Hindu, the same fate as that of an unmarried one, awaits her. A girl of 14, brought up in seclusion, understands very little of the terrible consequences of an act of momentary indiscretion. Married or unmarried, the age of consent should be raised to 16, which is still below the age of proper discretion.

3. Crimes of seduction or rape are not in frequent in this part of the country. There is no doubt that the raising of the age of consent to 14 has reduced the number of cases of seduction and rape of immature girls, to whom it has been a strong protection.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years—

(1) has not postponed the consummation of marriage to any noticeable degree,

(2) but has certainly stimulated public opinion in that direction, and

(3) has put off marriage beyond 13 amongst educated classes but not amongst the mass. It has created a stir in the mass but girls aged 8 or 9 are still to be seen in small village girls schools, wearing the veil proclaiming their status.

It is only by a dictum of penal law that the matter can be set right. Ignorant old men and women of the villages would submit to the principles of law, without which, social customs would go on as usual.

5. Generally at the age of 12 girls attain puberty. Classes of society, different castes or communities have made no difference in this matter.

6. (1) Cohabitation is not common before puberty though it does take place in some cases.

(2) It is common soon after puberty. In short a married girl is allowed to go to her husband's house soon after it.

(3) Before girls attain the age of 13, if puberty is attained, she goes to her husband's place. Such cases are not brought to the Court, directly, but cases of wives running away from the house of their husbands are sometimes brought to Court, ill-treatment being not the only cause of such escapes.

7. There is no religious injunction for early consummation of marriage before or at puberty but an idea is prevalent amongst the illiterate mass that the father should give away the daughter before she reaches her puberty. This is a thing unknown in old days. There is a tradition that early marriage came in vogue owing to the practice of kidnapping of girls preferably unmarried girls of the Hindu community previous to the British occupation of Bengal. Years ago I came to learn from the 80-year old Brahmin mother of a Police Officer that she was told by her grand-mother that when the latter was young she saw her female relatives covering their faces with ashes to appear ugly—the reason is obvious. The system of *Purdha* was and is, not still strict in Hindu community. The custom is, that, when the girl gets married she becomes what they call a “*Bou*” and they call a “*Bou*” and must not go about and should remain fully covered. The help of religion was sought for steps to prevent kidnapping and early marriage—really meant for protection—became a sort of religious necessity. This is the origin of the system of early marriage. It has really nothing to do with religion rather the contrary appears from the law of marriage, the wife to be a help mate.

8. The ceremony of “*Gaona*” or “*Garbhadan*” is not known in this part of the locality.

9. Attainment of puberty is by no means the sign of sufficient physical growth for consummation of marriage. The latter occurs still and many wrecks are the results. The age of 16 is the lowest at which consummation of marriage with due regard to progeny, should be fixed. At least 4 years after puberty physical development is sufficient for consummation of marriage.

10. At the age of 18 a girl may be considered competent to give her consent, where she is intelligent and has some education to understand the consequences. In other cases 20 is the proper age.

11. I have not come across any case of cohabitation before or at puberty leading to “permanent” physical injury to the girl or to her progeny. But I have seen girls raped before puberty having faces void of the girlish charms and looking older by years.

12. There is a great deterioration in the health of the children and young men and women of the present generation, due to having unfit mothers, mothers too young to bear children and got sickly and “old at the age of twenty” as the Bengali proverb goes. Infant mortality is also mainly due to it. It is not denied by any body that the health and virility of the Bengali race are getting worse owing to early consummation of marriage.

13. Public opinion for extension of the age of consent in marital and extra-marital cases is undoubtedly developing but the development is confined more to the educated classes. The ignorant mass does what their fore-fathers did and would be guided by legal injunctions.

14. It is only the old women of the country who favour early marriages but few of them would desire consummation of marriage before puberty.

15. In connection with offences under Sections 375 and 376, I. P. C., difficulties have been experienced for ascertaining of age. It is commonly assumed by the Law Courts that in such cases a Medical Officer's opinion is indispensable. In my opinion it is wrong. Medical opinion is not safe in all cases. The tests pre-

scribed are uncertain and experienced doctors are not available because they rarely only have such cases before them. There is farther a great aversion to examination by a male doctor. Oral evidence of age should be made acceptable as much as Medical opinion, which is after all is an opinion and in my opinion inferior to oral evidence.

16. The difficulty or margin of error would not be reduced or minimised if the age of consent be raised to 14 or over, if the determining authority be only a Medical man. It is easy for a doctor to ascertain the age of a female with more certainty if she be of age below puberty or just attaining puberty.

17. There ought to be a difference in cases of marital offences from extra-marital cases. In the former cases rarely only would the parties have recourse to Courts. A sentence of two years in such cases would suffice but in extra-marital cases the punishment should be as in cases under Sections 375 and 376.

18. No difference in the trial of marital and extra-marital cases is desirable.

19. I do not think any extra safeguard is necessary to avoid offenders being improperly prosecuted, shielded or extorted.

20. In my opinion the penal legislation fixing the minimum age of marriage to be safer than fixing of a higher age of consent for marital cases. The country is far too backward in matters of female education.

21. What the penal law would do in course of 6 months in securing the object in view, in my opinion, social reforms by means of education and social propaganda would require sixty years or more.

2

Written Statement, dated the 18th August 1928, of the Noakhali Municipality.

I. Generally people do not think about all these things, but people having advanced ideas advocate a change in the light of the proposed amendment.

II. The women population are still not so educated in this part of the country as to understand the good or evil of having marital intercourse at an early age, i.e., before they are sufficiently fit to conceive. In majority of cases women are mere tools in the hands of their husbands and they have to yield before their (husbands') iron will. So if an advance is made there would be at least some check upon brutish desire of husbands.

III. Seduction or rape is infrequent, but occasionally there are cases.

IV. The amendment of 1925 has not been wholly effective, but it can not be said that it was without any effect. It has at best advanced the opinion of the thinking population to that direction.

1. No.

2. The amendment has surely stimulated the opinion of the thinking population.

3. No.

V. Usually at 14 girls attain puberty. It is usually the same in all castes and communities.

VI. Exception in cases of husbands who are highly educated and are of advanced ideas, generally a husband would have cohabitation with his married wife since the time of his marriage, irrespective of the consideration whether the girl attains puberty or not. The society has not as yet sufficiently advanced to permit wives to seek redress in Courts.

VII. No.

VIII. Yes.

The *Garbhadan* ceremony amongst Hindus which is locally called Second Marriage takes place immediately after the 1st menstruation.

IX. No. Attainment of puberty should not be an indication of physical maturity to justify consummation of marriage, because even with the attainment of puberty, the physique of the girl in some cases is not fit to be sufficiently developed to permit consummation.

No definite opinion can be given about the age—but approximately can be laid down at 15-16.

X. With proper education a girl at 15-16 and not below that age, can be expected to give an intelligent consent to cohabitation.

XI. It is not possible to give details of age and injury, sustained, but it is common experience that cohabitation before full physical development has resulted injury to health.

XII. Yes. Surely.

XIII. The demand for charge is confined to the educated classes with advanced and liberal ideas.

XIV. The idea of consummation of marriage for children obtains amongst uneducated and backward classes.

XV. Yes—difficulties are sometimes felt, because by reason of immature cohabitation, there is a superficial growth; though as a matter of fact the age is not what it appears to be.

XVI. Yes—read with question 15.

XVII. Legislation fixing the minimum age of marriage would surely be more effective than the raising of age of consent. Fixing of minimum age of marriage would be in consonance with the public opinion.

XXI. I would rely on both.

Written statement of Ram Brahma Mahamahopadhyaya Tarka Tirtha, District Birbhum.

1. I am not much aware of this fact.

2. The present ages of consent are 13 and 14 for the husband and outsiders respectively.

(1) I do not consider a change is necessary, for generally speaking in this country the girls menstruate before 13 years of age.

(2) There is no reason for an advance on the present law.

3. Cases of seduction and rape are not common in this part of the country. The number of such cases have therefore neither increased nor decreased by raising of the age of consent to 14 years by the amendment of 1925.

4. No material changes have been visible during the short period that has elapsed since the amendment to the act of 1925 raising the age of Consent to 14 years in the case of husband.

5. Girls usually attain puberty between the ages of 11 and 14 years. I am not aware of the fact whether the age differs within different castes and classes.

6. I am not able to answer this question as I do not know much about it.

7. There are no religious injunctions for the consummation of marriage before puberty.

8. 'Garbadhan' ceremony is not performed.

9. The suitability of a girl for marriage is determined in consideration of her health after she has attained puberty.

10. Indian girls are generally fit to give consent at the age of 13 years.

11. I am unable to answer this question.

12. I have not been able to reach to any conclusion on this point.

13. I do not consider that there is much necessity to go beyond the age limit for marital and extra-marital cases prescribed by the amendment of 1925.

14. Any further increase is not desired by the educated classes. Women of our country do not favour early consummation of marriage for children.

15. In our country few cases crop up under sections 375 and 376 and therefore no dispute arise with reference to age.

16. I am not able to answer this question.

17. Yes it is quite proper to separate marital and extra-marital cases. It is desirable that the penalty in the latter cases should remain as it is under the present law but it should be less in the former.

18. I am unable to say.

19. I do not know much about this and cannot therefore give an answer.

20. The age of consent which now holds under the law should in no case be increased even if it is found necessary to raise this age at all events. I do not find it necessary to raise the age of marriage too with it.

21. I consider it should be more proper to rely on education than law.

DACCA.

Written Statement, dated the 11th August 1928, of K. NAZIMUDDIN, Esq., M.A. (Cantab.), Bar.-at-Law, C.I.E., Chairman, Municipal Office, Dacca.

With reference to your letter No. 42-A. C. C., forwarding a copy of the questionnaire on the Age of Consent Bill, I have the honour to state that the matter was put up before the Municipal Commissioners in the extraordinary meeting held on 10th August 1928. The matter was thoroughly discussed by the Commissioners, on which they have come to the unanimous decision that the present law as regards the Age of Consent in marital cases should remain as it is, but they recommend that the Age of Consent in non-marital cases should be raised from 16 to 18 years. The Commissioners have also been requested to send their individual opinion as regards the questionnaire.

A copy of the resolution is also enclosed.

Proceedings of an extraordinary meeting held on 10th August, 1928.

PRESENT :

- | | |
|--|------------------------------|
| 1. Chairman. | 6. Babu Satyendra Kumar Das. |
| 2. Vice-Chairman. | 7. Babu Birendra Nath Basu. |
| 3. Rai Pyari Lal Doss Bahadur. | 8. Babu Sitanath De Sarkar. |
| 4. Nawabzada K. M. Afzal Khan Bahadur. | 9. Babu Monoranjan Banerjee. |
| 5. Dr. Bama Charan Chakravarty. | 10. Babu Janaki Ballab Dutt. |

Khan Bahadur Kazimuddin Ahmed Siddiki was present by request.

1. Considered the letter No. 42-A. C. C., dated the 27th July 1928, from the Secretary, Age of Consent Committee, forwarding for reply a copy of questionnaire on the Age of Consent Bill.

After some discussion it was unanimously resolved that the Municipal Commissioners are of opinion that in marital cases the present law as regards the Age of Consent should not be altered but in non-marital cases the Age of Consent should be raised from 16 to 18 years, and that the Commissioners be requested to send their individual opinion as regards the questionnaire.

Oral Evidence of Mr. K. NAZIMUDDIN, M.A. (Cantab.), C.I.E., Bar.-at-Law.

(Dacca, 9th December, 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you the Chairman of the Dacca Municipality?

A. Yes.

Q. For how long have you been Chairman?

A. For the last six years.

Q. Have you been connected with any social or public movement in this part of the country?

A. I take part in all public movements in Dacca.

Q. Are there any communities in this part of the country where early marriage is practised?

A. Early marriage is common in this part of the country.

Q. What is the usual age of marriage among the Hindus?

A. I do not know.

Q. What is the usual age of marriage among the Mohammedans?

A. The usual age is after puberty but there are many cases where marriage takes place before puberty.

Q. In cases where the marriage takes place before puberty when does consummation take place?

A. After puberty.

Q. That is to say the girl is retained in the house of the parents until she attains puberty?

A. She is retained in the house of the husband but the parents of the husband see that consummation does not take place before puberty.

Q. Is there any *rukhsati* ceremony among the Mohammedans?

A. There is no special ceremony. Consummation takes place after marriage.

Q. Does consummation take place immediately after going to the husband's house?

A. Among us if she goes to the husband's house she does not go permanently. Usually the custom is that she goes to spend the first night and comes back the next day. Then she goes to stay there for a month and comes back.

Q. But there is no ceremony precedent to consummation?

A. Practically none.

Q. We were told by some witnesses that in some cases consummation takes place before puberty. Does that apply to Mohammedans also?

A. Certainly not. I am positive about it.

Q. At what age is puberty generally reached among Mohammedan girls?

A. From 12 to 13.

Q. That is both in cities and villages?

A. I would not be able to say with great emphasis about villages but at least in cities it is between 12 and 13.

Q. What is the usual age when girls give birth to children?

A. About 13 and 14. 14 is very common but 13 is also common.

Q. Are there any cases of maternity before 13?

A. I think I have heard of cases. In my own family one took place.

Q. Have you come across any evil effects as a result of early maternity?

A. My opinion is that mortality among women due to child-birth is not so much due to early consummation as it is due to unrestricted births. Mortality takes place on account of frequency of child birth. Certainly there is some mortality arising from marriage at tender age; but generally women die after the 4th or 5th child birth. For instance my sister was married when she was 15 but she died when the 4th child was born. Generally after child birth the constitution of the woman is reduced to a certain extent and then the conditions under which they live brings about further deterioration. They never get chances of recouping their health.

Q. You say that frequent child birth is the cause of devitalisation and you suggest for that the remedy of birth control?

A. Yes. There should be educative propaganda.

Q. I would like to know whether if maternity takes place at 14, 15 or 16 the children are as healthy as they would be if there were maternity after 18?

A. It is a question of statistics but I say whatever may be the other attending circumstances certainly the health of the woman has got a great deal to do with the physical condition of the children. There was another lady in our family. She was married at the age of 13, she started child bearing at 14 and she has now 5 children living and she lost one or two. Children are very healthy but the mother's health is very bad.

Q. Do you attribute the ill-health to early maternity?

A. I attribute it to continuous strain of maternity.

Q. Does early maternity contribute towards ill-health?

A. I have seen that in our cities generally marriages take place at 13 or 15 and consummation takes place immediately after puberty but there are very rare cases in which a mother has lost life on the first child-birth.

Q. Does devitalisation begin with early consummation?

A. No.

Q. Do you recommend that the age of consummation should be raised?

A. No, I say that legislation on this point is a bad law, it is honoured more in its breach. It is very difficult to enforce this law because the registration of births is very defective and as you have got no proper documentary evidence as to the age of the girl the result is that you will have to fall back upon medical examination which is absolutely absurd. Medical experts generally differ. During my election campaign in the mofussil I heard of a big case. There was a married girl and there was a question as regards her age. The girl was produced in court and the court was convinced that she was over 14 but the doctor said that she was under 14. As a matter of fact the party won the case. I was privately informed that the girl was actually under 13.

Q. Do you not agree to the raising of the Age of Consent?

A. No.

Q. Would you recommend fixing the age of marriage?

A. This is a thing which should be done by means of creation of public opinion. I am personally very much against fixing the age for marriage. I will cite many cases. I am personally very much against early marriages but I have myself been concerned in four or five girls getting married just at the age of puberty. Circumstances were such that it was in the interests of all concerned that they should be married although I exercised my influence in postponing the marriage. If you make a law and decided that you cannot marry before a certain age you will be creating a great deal of hardship and it will be practically unprecedented. There is no such law in any other country.

Q. I may tell you that in Egypt and Turkey there is a marriage law.

A. These countries have lost their balance and they are doing things which are not justified by experience. They are experimenting in all cases.

Q. You are aware that European countries have late marriages and therefore need no law fixing the minimum age of marriage. They have certain laws in certain countries but those laws exist only nominally but in India in large parts of the country we have early marriages and the necessity for a law has been suggested by various people.

A. But the question is how far public opinion will support it.

Q. Would it not be sufficient, if there is a law fixing the minimum age for marriage to give authority to the District Judge to grant exemptions in suitable cases?

A. There will be cases of economic hardship; some people will like to marry both the sisters together on account of economic reasons.

Q. If exemption is provided for would that solve the difficulty?

A. The magistrate would be inundated with applications for exemptions.

Q. But you would only make it applicable to hard cases.

A. Then again the question of age will come in.

Q. Do not the Mohammedans note the date of birth?

A. In the towns we are trying to enforce the registration of births but again it is not very perfect.

Q. What are the defects?

A. The difficulty is that people do not notify.

Q. Is there no provision that in case of breach they will be punished?

A. There is, but it is not enforced. If it is done there will be wholesale breaking of the law and there will be a tremendous hue and cry.

Q. Don't you think that if a few people are prosecuted the result will be very good?

A. No. For instance for food adulteration in Dacca we prosecute about 200 people every year but it has no effect.

Q. What punishment do you give to those people?

A. In the case of food adulteration we have got a grievance against the District Magistrate. The fine is so small that it has no effect.

Q. If you give exemplary punishment in one or two cases will not the result be very effective?

A. The District Magistrate does not do it. It is a matter which has been brought to the notice of various Sub-Divisional Officers that it was no use fining people only Re. 1 or Rs. 2 when the man was making huge profits.

Q. In the case of birth registration there would be no question of profit and it will awaken people to a sense of responsibility. In other places there is a municipal inspector or darogha who goes round and examines the figure and finds out where there are any omissions; the chowkidar or sweeper also give information and the system is working accurately and smoothly.

A. We have got a system of vaccination and when we get figures for primary vaccinations at that time we catch those people, who have not registered the births.

Q. Can you suggest any improvements in that system?

A. That system is difficult in its working and in the District it is worse.

Q. What recommendation do you make as regards non-marital cases?

A. In non-marital cases I think serious notice should be taken.

Q. Do you think that we may recommend an advance on the present age?

A. I think it may be increased to 15 in non-marital cases.

Q. Do you think it will protect the girls sufficiently?

A. Yes.

Q. People have told us that there are lot of cases of seduction and rape and kidnapping and if the age is only 15 minors will not be protected in any large measure from being victims of kidnapping and rape?

A. If the percentage is taken, cases of seduction or abduction are not more in this Province than in any part of the world. When newspapers do not find any sensational news they take hold of this news.

Q. It is urged that girls are so immature in understanding that they do not realise what their future is likely to be and they are induced away by false hopes. The object is to raise the Age of Consent so that we may protect immature girls.

A. A girl of 15 in India is sufficiently mature for that but if you expect her to understand what her future consequences are going to be she does not understand.

Q. In your statement you have said that the age might be raised to 16 or 18?

A. That was placed before the meeting of the municipal commissioners and that was their collective opinion.

Q. Would you recommend on behalf of the municipal commissioners that the age in extra-marital cases may be raised to 16 or 18?

A. As far as I remember the majority of opinion was that it should be raised as much as possible but I cannot commit myself on their behalf to any particular age. My own opinion is that it should be raised to 15.

Mr. Kadri: I take it that the girls in your family are generally well developed because you are well off but the same conditions do not exist in all Mohammedan families. Is it not so?

A. Even in my family I would not consider they are well developed because of purdah. It has a great effect on their health. It is just possible that girls in the villages may be better developed than girls in the towns but in Eastern Bengal in villages also they observe purdah.

Q. But they are poor and cannot get sufficient food. Is it not so?

A. Of course the well-to-do families get good food but they do not get good exercise and open air.

Q. Is it only in few cases that girls become mothers before the completion of the age of 14?

A. Generally it is after 14.

Q. Among Shurafa what is the age?

A. Between 14 and 15.

Q. Do you think there is any objection to raising the present Age of Consent?

A. The majority of marriages are consummated immediately after puberty and I see puberty is attained here between 12 and 13.

Q. Do you think that mere attainment of puberty is a sufficient sign of full physical development of the girl to enter into maternity?

A. Certainly not. Early consummation affects her physical development.

Q. Does it affect her deleteriously?

A. Yes.

Q. You know that according to Mohammedan law the object of marriage is to procreate *awlad-i saleh* which means healthy and strong children fit to serve God and His creatures, and in early maternity it is difficult to procreate such children. On this score would you not recommend raising the age to 14?

A. I do not think it will be advisable to raise the age of consummation to 14.

Q. If you are thinking of the difficulty of harassment by unnecessary prosecutions safeguards might be provided for that. Would that satisfy you?

A. I feel that the creation of public opinion against early consummation will have a far better effect than legislation. Legislation seems unnatural in this respect. Where there is a practice prevalent that girls of 8 or 9 are married, where there is no widow re-marriage, if something is done there by legislation there is some justification, but where people marry girls after the attainment of puberty, and marriages are not consummated till after puberty and at the same time where widows can re-marry, there seems to me hardly any case for legislation.

Q. Don't you think that legislation will lead to the creation of public opinion?

A. I do not think so. 90 per cent. of the people in this District do not know that there is any Age of Consent.

Q. Would you be surprised if I told you that there are several communities among the Mohammedans among whom early marriage does take place and that there are some cases of pre-puberty consummations also. Though

re-marriage is allowed it is not followed in practice. Among our *Shurafas* we never re-marry our girls. Is it not so?

A. In Bengal it is not the case; all the widows are married.

Q. If there are communities among whom such practices are prevalent don't you think law will be necessary?

A. I still think that the law will be unjustified.

Q. Among some Mohammedans marriages take place when the girl is 8, 9 or 10 and immediately after marriage, whether puberty has been attained or not, consummation takes place. Don't you think that girls in those cases require protection?

A. I do not think that is generally the case. It is limited to a very small circle. That practice does not at least exist among the Mohammedans of Bengal.

Q. Are there many cases of seduction of girls here—more than in any other part of the Presidency?

A. I have stated before that cases here are not more than in any other part. The newspapers only give it prominence. When reading papers I am particular, so far as this question is concerned, to see if there are any cases. Unfortunately I have not kept cuttings, otherwise that would have been a convincing evidence that the number of cases reported is absolutely normal. Another thing that has to be considered is the proportion of Mussalman population to the other population. Supposing the population of Mohammedans is 70 per cent. and the other population is 30 per cent. the crime would be $2\frac{1}{2}$ times more. The percentage of seductions is not beyond the proportion of population.

Q. We are told that there are large number of abductions and very often widows of 16 years of age are seduced?

A. I have considered this question very carefully and the fact is that whenever a question of this kind happens, although it may be of a very ordinary criminal nature, it is given a bold advertisement. It is given a communal turn and public opinion is immediately divided on 2 sides. One is on the side of those who abducted the girl and the other on the side of those whose girl has been abducted. It is made a sensational news. Among the Hindu community there is a great prejudice that Mohammedans are doing it.

Mr. Bhargava: You have two objections to raising the Age of Consent and fixing the age of marriage. One objection is that the registration of births is very inaccurate and the second objection is that the law regarding age of consummation has been a dead letter. As regards the Age of Consent inaccurate registration of births is your main objection?

A. This is also one of the objections.

Q. Supposing this registration of births is made more accurate as in some places it already is, e.g., in Punjab it is fairly accurate

A. In the districts also?

Q. Generally speaking. Then one of your objections goes away and if the age is increased to 15 or 16 can it be worked properly?

A. Certainly one of the objections goes away.

Q. May I know your other objections to increasing the age as regards consummation?

A. As I said, it has bad effects on the husband if after marriage consummation cannot take place and if the girl is allowed to live with him or even away from him. The chances of going wrong are much more.

Q. What is usually the difference between the age of the boy and the girl when they are married?

A. Generally among the Hindus the boys are married after they have graduated. I would put down the age at 18 or 19. Among the Muslims also this is the general rule.

Q. What is the age of the girl?

A. 13 or 14.

Q. This is with regard to urban areas. What about the rural areas?

A. I would not be able to say with very great confidence. The difference is generally three or four years.

Q. Generally speaking the boy will be 16 or 17 and the girl 12 or 13. So they can easily wait for another two or three years.

A. The whole trouble is if a man and the woman mature very early and there is delay in consummation of marriage, it is liable to have bad effects upon the health of the boy.

Q. Do you think there is any great desire in a boy of 16 living in a village and doing agricultural and other manual work, to go to his wife?

A. In most of the big villages there are huts where there are bazaar women and there are chances of going wrong.

Q. But wherever there are bazaar women generally they must be above 20.

A. In these huts the girls are 13 and 14.

Q. Then it follows if you want to stop this trade of minor girls you must raise the extra-marital age to a fairly good extent?

A. Yes.

Q. What age would you fix for extra-marital cases?

A. I would go up to 16.

Q. Now, if the age of the girls who can come to these huts is above 16, with boys of 16 and 17, they cannot follow that trade?

A. Why not? It is the other way about. Now-a-days the boys are very rarely attracted by young girls of tender age, but they are much more attracted by mature girls.

Q. But the main question is not about boys?

A. We have to consider that also. In India there is another thing also. There is no control over the infectious diseases that result from this. It has far worse effect on the wife than any consummation at 12 or 13. If you want to protect the women the first and foremost thing is to do something about venereal disease. It is doing much more harm.

Mr. Mitra: Are you opposed to social legislation about marriage and consummation or principle or as a matter of expediency?

A. On both grounds.

Q. If your two objections that you raise about the law being a dead letter and about the difficulty of finding out the age are removed, would you still have any objection?

A. I would still object.

Q. Is it not a fact that there is nothing in the Muslim scriptures about fixing the age either way?

A. My personal opinion is that I don't think the Muslim scriptures have anything to do with it. I think the Muslims have been given absolute liberty of marrying at any age. Religion has nothing to do with this.

Q. As far as you understand religion you think that the enactment of the law does not go against the Muslim scriptures?

A. No.

Q. Do you think that sometime should elapse between the attainment of puberty and consummation for the girl to become fully developed?

A. I scrupulously observe this even with regard to animals. From my practical experience I can say far greater harm is done by uncontrolled birth. I think it is development of the physique of the girl more than early consummation that matters . . .

Q. You think therefore that sometime should elapse?

A. From the hygienic point of view it should be done.

Q. You also know that regular menses are established only after a year or so.

A. Yes.

Q. You think physical development of the body is certainly affected?

A. The growth is stunted by early consummation and early maternity.

Q. May I take it that your experience about these matters is confined to Mohammedans in the city of Dacca?

A. Yes.

Q. You can't say about rural areas?

A. No.

Q. You say there are many cases of maternity at 13 and 14. Is it both amongst Hindus and Mohammedans?

A. I am talking of Mohammedans.

Q. And these girls must have been married earlier?

A. Yes.

Q. Even in the city of Dacca, therefore, marriage before puberty takes place?

A. Marriages do take place before puberty but consummation never takes place so far as Mohammedans are concerned except in very rare cases before puberty.

Q. You speak about propaganda. Don't you think that by propaganda we can reach the educated classes and the masses are left aside. How would you approach the masses?

A. The masses can also be approached by means of propaganda.

Q. What kind of propaganda? Do you mean lectures, etc.?

A. The masses are generally controlled by the lead of a few. If you can get hold of the few, in villages there are only one or two men who lead, and if you can win them over the chances are that about others you will have no difficulty.

Q. What is your objection against a law fixing the minimum age of marriage if it is not against the scriptures?

A. It is a grave hardship. There are many cases where circumstances are such that marriage has to be celebrated at an early date.

Q. If exemptions are made for such cases?

A. Even then I won't approve of it. For the simple reason that there may be harassment by the police.

Q. If such cases are made non-cognizable the police can't harass and if other safeguards are provided what objection have you got if there are no objections from the scriptural point of view?

A. I don't think liberty should be restricted by legislation in this way.

Q. Though you feel it is telling upon the health of the generation?

A. There are other ways of doing it. In India you find everything is on the move. The people are in a large number of cases giving up this idea of early marriage. Like Purda and other things this has also got to go.

Q. You think the object would be achieved in course of time?

A. Yes.

Mrs. Nehru: You said you were against legislation on account of two reasons, one of them being the difficulty of ascertaining the age. If the age is raised to 16 this difficulty will be very greatly minimised. Don't you think so?

A. The only way in which you can ascertain the age is from the birth register. What difference will it make?

Q. The age can be judged from appearance also? The difference between 12 and 13 may not be great but it will be very much so between 13 and 15.

A. But between 15 and 16 there can't be much difference.

Q. Therefore I say it will be minimised. I use the word "minimised". One of your objections would be partially if not wholly met. Would you to some extent at least give your approval for the proposed legislation then?

A. I consider in India 16 is a very advanced age for marital cases. In India and England for instance the difference in the attainment of puberty is certainly two years

Q. Can you tell me why this difference is so great even in India between the early marrying communities and the late marrying communities? This getting of puberty is a factor which is really not a constant factor. By the change of circumstances and by the change of mental environments the age of puberty even can be raised.

A. It may be due to climatic conditions.

Q. What I say is that psychological conditions also play a part. Late marrying communities have late puberty. So that if we can delay the consummation of marriage it is possible that after sometime puberty may also be attained later. The whole question revolves round that. If puberty can be delayed certainly there can be no objection.

A. If there is medical opinion to support that, certainly that becomes a sufficient justification.

Q. One thing depends upon the other. Late marriage means late puberty. It is a vicious circle. Therefore for sometime we shall have to be content with early puberty and late marriage and after sometime puberty will also come late.

A. If there is adequate medical opinion

Q. That there is and facts coincide with that opinion. Our investigation has showed us that late marrying communities have late puberty and early marrying communities have early puberty.

A. That is a sufficient justification then.

Q. What is the condition of education amongst Mohammedans in Eastern Bengal?

A. It is most unsatisfactory.

Q. Is purda very severe?

A. Yes. Even in villages there is a certain amount of Purda.

Q. Do Mohammedan girls take advantage of municipal schools?

A. Very few.

Q. Are even small girls not allowed to go to schools?

A. They do. But unfortunately, people are very lethargic about it. Girl schools in Mohammedan areas are not so well patronised as girl schools in Hindu areas.

Q. Hardly a single girl must be going for higher education?

A. No girl goes for high education. We have got the Eden High school that provides instruction up to the intermediate standard.

Dr. Beadon: You have said it is better to have early marriage as otherwise there is very great danger of venereal disease. Do you think it is quite impossible for boys to remain moral up to 20?

A. No. Among the Hindus marriages take place generally, as I have already said, after graduation. Even among the Mohammedans also sometimes this is the case. But there is a danger of their going wrong. The boys who don't go to school may go wrong.

Q. Education is backward both among Mohammedan boys and girls and therefore there is nothing to occupy the boys' minds and they go wrong. Is that so?

A. The boys who go to schools do not require any protection. They are busy.

Q. Are there any welfare centres here?

A. Yes.

Q. How long has it been worked?

A. I think for the last 7 or 8 years.

Q. Are there any records kept?

A. Yes. It is under the Trust and the District Magistrate is the President and the Health Officer of the Dacca municipality is the Secretary.

Q. Are there more than one centres?

A. There are two.

Q. Are they fairly well patronised?

A. Yes.

Q. Are there any maternity hospitals under the municipality?

A. The municipality makes grants. It is under a trust. It was started by Mr. Lindsey when he was District Magistrate. It is under a body of trustees and the Municipality is making liberal grants.

**Written Statement, dated 7th August 1928, of Mr. SRINATH DAS,
B.L., Pleader, District Courts, Mymensingh, Bengal.**

1. No, there is no dissatisfaction on account of the last amendment, except in the over-orthodox section.

2. I honestly believe that there should be an advance on the present law. The women concerned may be taken under three heads, viz., (1) Mercenary women including prostitutes (2) wives, and (3) women other than wives and mercenaries.

Those who come under the first head are, I believe, mercilessly treated by those who choose to pay for the intercourse. The unfortunates have to yield for their bread. Regardless of health and questions of personal safety and sometimes they are in the employ of old prostitutes who keep the conscience of the wards. I am therefore decidedly in favour of raising the age to sixteen, when these girls may be credited with some sense of consequences. In this part of Bengal a considerable percentage of public women happen to be below sixteen. They are also believed to be in demand; and the raising of the age will certainly serve as a wholesome check on those who indulge in mercenary small girls.

As regards child-wives, the Age of Consent should be raised for medical reasons; and also with a view to stimulate public opinion in favour of medical opinion.

With regard to girls who come under the aforementioned third class, it is only fair and proper that adult men should hesitate thrice before freely mixing with women of immature age (specially child-widows, and girls forsaken by husbands, and girls who are not properly looked after by their guardians) with a view to merrily seduce them to illicit intercourse. Oftener than not, these immature young women do not realise the consequences of their weaknesses, and are over credulous on the score of sincerity of their supposed lovers. The law of the country ought to protect them.

3. Yes, they are frequent in the District of Mymensingh where I have been practising since 1902 (though not in Bengal in general).

I fear the reduction if any (the statistics are not before me) is not due to raising the Age of Consent. A further raising of the Age of Consent may have a deterrent effect. It is indeed very difficult to say what measures are calculated to make the law effective. Two ways suggest themselves to me—firstly to bring seduction cases and rape cases under the category of special report cases and to get the investigations in all cases supervised by mem-

bers of Imperial Police Service which is calculated to inspire awe in the interior, and secondly to issue general instructions to Judges and Magistrates to pass exemplary sentences when they are found guilty and to bind down the convicts for long periods after they serve out their sentences. It is worthy of note in this connection that the Common Jurors are often prone to return verdicts unfavourable to accused in this class of cases, almost regardless of the nature of evidence. In my experience I have seen a good number of false cases of abductions ending in convictions in Sessions Courts. Accused in these cases should therefore be tried by Special Jurors, and all such cases should be tried by the Court of Sessions exclusively, including those U/S 363, I. P. C.

4. No, I do not think so. But I honestly believe that the amendment has been shaping the public opinion gradually.

The only measure I can suggest is by all means to stimulate public opinion.

5. I believe 13 to 14, generally speaking; girls of poorer classes who have got to mix with males in their every day transactions and who are not properly looked after attain puberty a bit earlier for obvious reasons.

6. Even before puberty, I believe it is common amongst people who have no breeding or education. And their number is considerable. As regards co-habitation with married girl soon after puberty and shortly before a married girl completes 13 years, I honestly believe that nine-tenths of the Indian husbands ought to confess their weaknesses. But it is fortunate that Child marriage is rapidly getting rarer in middle and higher classes.

Yes, I remember only one such case at Mymensingh.

7. No, I do not attribute it to religious injunctions at all.

8. No, it is not performed in this part of the country.

9. No, I do not think so. A girl should be at least 18 when she may be considered fit for consummation without injury to her own health and that of her progeny. But I know of girls bringing forth healthy children at much less than 18.

10. I believe, an average Indian girl, to give an intelligent consent to co-habitation with a due realisation of consequences, should be at least 18.

11. Yes—I can cite any number of them. But three of them struck me pre-eminently (being my close relations). All three conceived at 13 to 14. One lost the first 5 children and the other lost the first two, all 7 during infancy. Both the ladies are alive. The former got paralysis at age 50 or so. The latter has been keeping indifferent health for the last 10 years. She is now about 40. The latter's surviving children are below average in intelligence. But the former's not so. The third lady lost about 6 children during infancy in quick succession and she has got only her last issue alive (probably 7th) who is now a lad of 14. The lady is now about 45. She is reported to be suffering from female diseases for a long time.

12. Yes, I do. But the medical men are most competent to speak on the point.

13. No. I am not aware.

14. No. I do not think.

15. Yes. Permit me also to say that in Mufassil the Doctors in charge of Hospitals have a tendency to give their opinion in favour of prosecution. I do not suggest that they do so dishonestly in all cases. The only measure that I can propose is to strictly enforce throughout the country the Registration of births and its proper publication and supervision. Till then I would suggest that the Judges may be asked to examine the leading people of the vicinity of the place of birth of the girl by calling them in as Court Witnesses, when occasions require. Of course there are cases in which neither witnesses nor doctors need be examined. I mean when the girls in question are clearly above or below the Zone.

16. I do not think it will be reduced or minimised. The same difficulties will be there. I venture to fancy it is difficult even for medical experts to differentiate between 15 and 17. And when they once give their opinion one way or the other it is next to impossible to look up medical reasons pointing to the contrary even when the opinion is incorrect or false in fact.

17. Yes. I would separate extra-marital and marital offences into different sections, I would propose fine only not exceeding Rs. 200 for marital offences. The punishment for extra-marital cases does not call for any leniency whatsoever.

The offences are different types altogether though both sexual. A perfectly decent and self-respecting citizen may feel inclined with best of motives to fondle or coax his wife even if she be below fourteen or for the matter of that verging upon thirteen, specially in India where puberty is attained rather earlier. Now, these blandishments may entail an insurmountable craving for consummation which was not preconceived. I am clearly of opinion there should be no sentence beyond fine, in marital cases.

Section 375, as it now stands is unnecessarily difficult being saddled with "ifs" and restrictions and exceptions—one would instinctively like to see the section split up into two; one dealing with intercourse with child wives (technically called illicit* married intercourse—An Oxymoron expression) and the other with truly illicit intercourse which calls for exemplary sentences.

18. Yes, the marital offences should be dealt with under Chapter XX, C. P. C., and they should be classed as non-cognizable with a view to keep off the Police.

19. No. I confess I cannot suggest any safeguards against collusion. And I believe there should be no attempt at introducing safeguards. It is not uncommon in Bengal specially among low class people that bride's party are at logger-heads with the bridegrooms. Even elderly girls sometimes take up a hostile attitude against unfortunate husbands. If I am in favour of penalising "unlawful" married intercourse, it is only because I desire to stimulate public opinion in that direction. I do not like that Police should be busy collecting evidence against husbands or that the married girls or their fathers or uncles should take recourse to this section goaded by animosity.

20. I believe legislations, fixing the minimum age of marriage, is certainly more effective. Of course this alternative I fear would not be in consonance with public opinion which on this score appears to be unhappily saddled with indelible prejudices. But I am confident the reasonable section will welcome it.

21. I would rely more on the latter than on the former. But both should go hand in hand, to be effective. The sanction of the state would convincingly declare the wisdom of the contemplated social reforms by means of education and social propaganda; and would place in a position of vantage, the selfless reformers, who will always remain above suspicion.

* I would substitute illicit with "unlawful".

Oral Evidence of Mr. SRINATH DAS, Pleader, District Courts, Mymensingh.

(Dacca, 9th December, 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you a legal practitioner in Mymensingh?

A. Yes.

Q. How many years' practice have you had?

A. About 27 years.

Q. Are you connected with any public movement in your part of the country, connected with social reform or otherwise?

A. I was connected with the Congress Committee for some time; I was in the Municipality for 9 years.

Q. Amongst what classes is early marriage practised?

A. In the low class people, especially the Namsudras. It is also practised among low class Muhammedans, and up-country people residing here as menials; and also amongst blacksmith, carpenters, washermen, barbers and others.

Q. What is the usual age of marriage amongst them?

A. About 10 to 12.

Q. What is the marriageable age amongst other classes?

A. Amongst the middle classes and the higher classes it is 15 to 17.

Q. Does that include the Brahmins also?

A. Yes; the marriageable is high in the case of educated Brahmins. But Brahmins of the priestly class observe early marriage. Amongst the latter class the marriage age is about 9 to 12.

Q. What will be the proportion of the people who have later marriages as compared with those who have early marriages?

A. It will be 30 per cent. and 70 per cent.

Q. What is the usual age of puberty in this part of the country?

A. About 13 to 14.

Q. Is it the same both amongst the lower and the higher classes?

A. In the lower classes it is 13 to 14 and in the higher classes 14 to 15. The lower class people attain puberty earlier.

Q. Do you think that there is any difference in this respect between girls in the rural areas and in the cities?

A. I do not think there is any difference.

Q. Can you tell us what is the practice about the consummation of marriages here?

A. In the case of people who observe early marriages, consummation takes place at about 13.

Q. In the case of people who observe late marriages, does consummation take place immediately after marriage, or does sometime elapse?

A. In their case, consummation immediately follows marriage.

Q. Is any ceremony performed at the time of consummation?

A. The Garbhadan ceremony is performed, but it is getting rare. It does not obtain so much now as it used to be 10 or 15 years ago. It is performed both by Brahmins and non-Brahmins, but it is disappearing.

Q. You say that in the case of early marriages, consummation usually takes place at 13; have you come across any evil results due to consummation at 13?

A. Yes; I know of some instances.

Q. Has there been injury to the child or the mothers?

A. There has been injury both to the children and the mothers. In one case the mother only was affected, but not the child.

Q. Do you think that babies born to young mothers are weaker than babies born to older mothers? Have you observed any difference in this respect?

A. I cannot be positive on this point.

Q. Are you in favour of fixing an age for marriage?

A. I am for 16 being fixed as the age of marriage.

Q. Do you think it will be acceptable to the orthodox Hindu community?

A. It will not be acceptable to the orthodox community; but the reasonable section of the community would welcome it.

Q. Do you not think there will be strong opposition?

A. I do not think the opposition would be very strong.

Q. What age would you recommend for consummation?

A. 16.

Q. Sarda's Bill proposes 14 for marriage? Would you have 14, as a first step towards a further advance?

A. Yes; as a first step. But I would personally like to begin with 16.

Q. If 14 is fixed as the age of marriage what age would you recommend for consummation?

A. 16.

Q. Do you think people would be able to look after their girls between the ages of 14 and 16, so as to prevent breaches of the law?

A. I think the middle class people will not break the law. They will be prepared to protect the girls.

Q. Can you suggest any method by which we can discover breaches of the law?

A. My idea is that in these cases there should be no attempt at discovery.

Q. If you want the law to be obeyed we have to find out means by which we can know whether the law has been broken.

A. If consummation is penalised before 16, my idea is that public opinion will shape itself gradually, but we should not interfere with the domestic relations of people.

Q. If you make breaches of the law punishable, the result will be you will punish some offenders, but the ultimate result will be all right.

A. I think that should be avoided if possible. I do not think that you should attempt to discover breaches. But if they come to light, they might be punished.

Q. Would you like the formation of vigilance societies to do educative work and bring cases of breaches of the law to light?

A. Certainly not.

Q. They would be doing educative work also.

A. But there is the law; there is the sanction of the State behind it. I would like that public opinion and the State should work hand in hand.

Q. Would you like to entrust the work to social reform organisations?

A. Yes.

Q. Would you like to make marital cases cognisable or non-cognisable?

A. In my opinion the police should be kept out of these cases as far as possible. These cases should come under Chapter 20 of the Criminal Procedure Code.

Q. Supposing the girl is 11 years old, and there has been serious injury . .

A. They would come under Sections 304, 323, 325 and similar sections of the Indian Penal Code. In such cases supposing there is serious injury it is always open to the father of the girl to complain.

Q. In other words, do you want the law to take its own course?

A. Yes.

Q. Would you make all marital cases non-cognisable irrespective of the age of the girl unless there has been grievous injury?

A. Yes; provided there is no injury.

Q. Would you make these cases compoundable in order that good relations might be restored between the husband and the wife?

A. Yes; I would make the offence compoundable with the sanction of the court.

Q. Supposing it results in culpable homicide, would you still make it compoundable?

A. It is not compoundable under the law as it is now.

Q. Would you amend the law to provide for such cases.

A. I do not think that the offence of murder should be made compoundable.

Q. Would you make these cases cognisable provided the enquiry is made by gazetted officers of the police like Deputy Superintendents?

A. Of course if the cases are to be made cognisable higher police officers are better. But I don't think that in cases where there has been no injury the police should interfere.

Q. You are looking at it only from the point of view of injury. But there are other considerations such as the health of the girl and the health of the progeny and they should weigh in the consideration of these issues. The principal question is whether the race has become weaker and if so whether the girls should be protected.

A. My idea is that if the police has got to be thrust upon the people the investigation ought to be done by members of the higher ranks. But about the other point as to whether the girls and their progeny would suffer, I think that in a majority of cases the girls or the progeny will not suffer, because the husbands would not naturally be merciless towards their wives. Therefore the society will not be affected very much.

Q. Do you not think that there is a growing physical degeneration of the people?

A. But early marriage and early consummation are not the only causes which bring about degeneration.

Q. Is not early marriage or early consummation one of the reasons contributing to it?

A. Yes; it is one of the causes.

Q. Do you not think that it is desirable to prevent it?

A. Yes; but we should not thereby invite greater evils.

Q. It has been further suggested that before issuing summons or warrant, the Magistrate should hold a preliminary enquiry. Do you agree?

A. Yes; I think that Section 561 covers the whole field.

Q. It has also been suggested that all marital cases might go to a matrimonial court consisting of a Magistrate and two non-officials who might sit as judges. Do you think these courts will serve the purpose better, create greater public confidence, and help in the expedition of the trials.

A. Even there I would divide the cases into two, namely those with injuries, and those without injuries. Cases with injuries may go to such courts, but if there are no injuries, no fuss need be made about them.

Q. What is the harm in both class of cases going to the court? The court will just do what is needed to suit the requirements of individual cases.

A. On re-consideration I think that even with regard to cases in which there is injury no such special courts are necessary. The law as it obtains at present is quite sufficient.

Q. At present cases under 12 go to a Sessions Court and cases above 12 go to a Magistrate. Instead of having these two forums, a suggestion has been made that we might have only one court.

A. That will entail a large cost for nothing.

Q. The two non-officials will be honorary.

A. But even apart from the question of cost I do not think that it will be of any special advantage.

Q. Would you advocate a system of registration of marriages giving the names, ages and other particulars about the marrying parties so that they might be recorded and be useful in cases of breach of the law?

A. That is a very good idea.

Q. Who do you think should be the registering authority? Should it be the municipal boards and the district boards or should it be some executive authority?

A. I think district boards in rural areas and municipalities in towns will be better.

Q. Who is registering births and deaths in municipal areas?

A. There are some clerks working under the Health Officer.

Q. And in the rural areas?

A. The Chaukidars register them and report to the Thanas.

Q. Would you have a separate agency for the registration of marriages?

A. Apart from the question of costs, I think a separate agency would be more advisable.

Q. Would you recommend that a marriage certificate should be given by the registering authority to the parties concerned?

A. Yes.

Q. On whom would you place the obligation of reporting the marriages?

A. I would lay it on the parties.

Q. What age would you recommend for extra-marital cases?

A. I have said that I would have 18.

Dr. Beadon: In para. 11 you say that you know a number of cases. Would you mind giving us any other cases besides those which you have mentioned in which early maternity had resulted in suffering?

A. I remember one case of a girl who was delivered of a child at 13. The child died. The mother died subsequently.

Q. When was that?

A. About two years ago.

Q. Have you seen any other cases like that?

A. I can remember one other case in which the mother survived, but the child died. The mother got ill.

Q. Did that case take place long ago?

A. The one case which I could recollect just now happened 5 or 6 years ago.

Q. In all these cases were the people able to get medical attendance?

A. I do not think they were.

Q. Was the child still-born?

A. Yes; it was still-born.

Q. Was that the result of difficult labour, or was there some disease? We have been told that even a woman of 25 may have still-born children. Do you think that the still-born child was because of difficult labour?

A. Yes; it was because of very difficult labour. In one case the labour continued for three days.

Q. You have told us there is a class of people who always marry late, especially the non-Brahmins? Have you had occasion to observe their children? Do you find that there is any difference between the children of these girls and the children of girls who become mothers early?

A. In these matters it is very difficult to make an inference. I have known of mothers at 15 or 16. They bring forth both weak and strong children.

Q. Has it struck you that the greater proportion of the children of later marriages are healthy or that children of young mothers are unhealthy?

A. I cannot give any positive opinion on this matter.

Mrs. Nehru: You have referred to girls being deserted by their husbands. Are there many such in number?

A. I know only a few cases.

Q. In your statement you are constantly referring to classes. Is the division of society here according to classes or castes?

A. Here the division is only according to wealth. Interdining takes place regardless of caste; social intercourse takes place regardless of caste.

Q. To what classes do these girls who have been deserted by their husbands belong?

A. Poor middle classes.

Q. You say that cases of seduction are very frequent in this district. Can you give us details?

A. I have myself appeared in about 30 to 40 cases in the course of 8 to 10 years. The cases were both abduction and rape. The ages of the girls usually vary from 14 to 30.

Q. Were they cases of seduction only or rape also?

A. Both. But in almost all cases the charge made is not rape but seduction only, because in the case of rape the police cannot collect evidence so easily.

Q. But if the girl is over 14 seduction cannot be a crime.

A. In cases of kidnapping and abduction the girls are kidnapped with a view to commit rape. But when the cases come before the courts, the courts think it prudent to charge seduction only and not rape to obviate the difficulty of proving many facts. Therefore these cases are now shown as rape cases on the files of the courts.

Q. What is generally the castes of the girls and that of the offenders?

A. The offenders are mostly Muhammedans. In a few cases they are Hindus also. Of the abducted there are quite a number of Hindu girls, but their proportion is much less than Muhammedans.

Q. Are there cases of sale of girls?

A. Yes.

Q. Are they taken away to other provinces?

A. They are sold in this very province. I appeared in two cases where the girls were sold to prostitutes.

Q. In para. 6 you say that there are cases of consummation before puberty. Can you give us details as to amongst which classes it is prevalent?

A. It is prevalent both amongst Hindus and Muhammedans. It is prevalent mostly amongst classes like the goldsmiths, washermen and others. It all depends upon breeding and education.

Q. Would you like the power of complaint in marital cases to be given to certain social reform organisations so that it might serve as a propaganda measure?

A. It is all right if you are bent upon discovering such cases. But I personally am not for it.

Q. Do you think they will be able to work without harassment on the part of the people?

A. I am sure they will be harassed.

Q. If in accordance with your desire there is no attempt at discovery, the law will remain a dead letter. What is then the use of raising the age to 16?

A. I think it will shape public opinion if it has got the sanction of the State behind it.

Q. Has the present law shaped public opinion?

A. I believe it has.

Q. Do people even know about the existence of this law?

A. The middle class people know it, and they follow the law.

Mr. Mitra: You think that there are very few cases of the breaches of the law, because the existence of the law on the statute book has acted as a stimulus against breaches.

A. Yes. In shaping public opinion indirectly it has had great influence.

Q. Are you for fixing the age of marriage at 16?

A. Yes.

Q. Do you think that there will be a necessity then for the Age of Consent law?

A. No.

Q. In case we cannot have a law fixing the age of marriage would you have the law of consent?

A. Yes. I would fix the age at 16 in marital cases and in extra-marital cases I would have it at 18.

Q. In cases of breach of the marriage law, what punishment would you suggest for its infringement?

A. To begin with there should be simple imprisonment and fine also.

Q. Can you suggest any means by which we can make the present law of the Age of Consent known to the people?

A. The present law of the Age of Consent is not known to people; but if you have a marriage law it will be at once known.

Q. In para. 3 you suggest that general instructions might be issued to Judges and Magistrates to pass exemplary sentences. Do you think it will be possible to issue instructions in such a way?

A. Instructions of that kind are allowed not by the Government but by the High Court.

Q. Do you think it is proper, or would you simply rely on the discretion of the Magistrate?

A. There is no objection to the High Court giving instructions in the matter though it cannot be done by administrative departments.

Q. As a criminal lawyer, are you not aware that early marriages are practised extensively in Bengal and they would at once oppose 16 for the age of marriage? Do you not think that the orthodox people will resent it?

A. There will be resentment, but it will not be much.

Q. Do they rely upon religious injunctions for performing marriages before puberty, or is it only a custom?

A. It is due to custom, but that is also changing.

Q. In fact, is there any social oppression or ex-communication if girls are married late?

A. No.

Q. Do you think that, on the other hand, people who are for late marriages would welcome the law, because it will be an excuse for them to have late marriages?

A. The opinion is already in the air that the age should be raised. As soon as the law is introduced some of the orthodox people will resent, but the majority will welcome it.

Q. Do you think that there will only be some harmless demonstration?

A. Yes; and the opposition will die very soon.

Mr. Bhargava: Do you think there is no force in these religious injunctions?

A. No.

Q. You rely on social propaganda to educate public opinion and say that if the law is put into force people will come to realise the benefits of late consummation. But do you not realise that public consciousness has not been awakened till now in spite of the fact that social propaganda has been going on for a long time?

A. At least in this part of Bengal there has been no social propaganda.

Q. May I take it then that within the last 30 years or so there has been no social propaganda in this part of Bengal and for another 30 years to come also there will be no propaganda?

A. There will be social propaganda, but of course the progress will be slow.

Q. Are you in favour of official propaganda in this matter or do you want social organisations to take up the work with officials to back them up?

A. I would like to have social propaganda *plus* the sanction of the State.

Q. Would you like that this branch of the work should be made over to the health departments in each district and they might be charged with the duty of popularising the merits and demerits of late and early consummation?

A. I have not a very high opinion about the work of the Health Officers of the Districts.

Q. In what way do you think Government should come forward to the help of these social organisations?

A. Government might select educated men from all communities and form committees for the purpose.

Q. Are there rural councils in the Bengal Presidency consisting of non-officials?

A. Yes; there are rural councils in some of the districts.

Q. Would you recommend that Government should entrust the work to these Councils?

A. Yes.

Q. So far as the question of the offence being made cognisable is concerned, you prefer that only in cases of serious injuries the police should interfere.

A. In cases of injuries higher than under Section 323, I. P. C.

Q. Ordinarily speaking in rape cases there are no serious injuries, or if there are injuries they are cured within 20 days. Then such cases will not come under grievous hurt.

A. Any dangerous injury would come within the definition of grievous hurt.

Q. Any injury which makes a girl a wreck for life need not necessarily come under the definition of grievous hurt. In fact we have been given to know that serious injury is bound to result in case the girl is less than 13.

A. I do not think injuries dangerous to the life of the girl are bound to result in the case of consummation of girls at 12 though there may be simple injuries like scratches or bruises. However, in exceptional cases when a man has a wanton disregard of the consequences and is absolutely violent there may be danger to life.

Q. At present the law is that below 12 the case is cognisable by the police and between 12 and 13 it is not cognisable by the police. Do you want to leave as it is or do you want any change?

A. I want to keep out the police.

Q. Below 12, where there is an injury, are you for keeping out the police or not?

A. I want to make the injury as the test and if the injuries are very serious, then the police can interfere.

Q. Do you not see that the age which is now the test is so definite as to differentiate between a serious and an ordinary injury why do you want to make the injury as the test?

A. I quite see that. The one difficulty that is troubling me is this. If boys in their weakness commit an offence like this, they should be dealt with

by the parents if there is no injury, and the police shouldn't interfere in such cases.

Q. May I know what is exactly behind your mind in making it an offence for a husband to have sexual intercourse with a girl of tender years?

A. By tender years I mean 10 or 11.

Q. May I understand that supposing this age is 11, then you will make the rule absolute that offences should be made cognisable below this age?

A. Yes.

Q. You know the present law is 13 and no attempt is made to make it effective so that the mere retention of a provision of this nature on the statute book is by itself not preventive of such evils. Is that not so?

A. I beg to differ from you here Sir, because very soon people will realize and they have realized to some extent that these evils should be avoided, i.e., intercourse with immature girls or girls of tender years. The feeling is there and even without your bringing a law, you will see that in due course these evils will be eradicated altogether. What I mean to say is this. If these cases come to Court, they will entail hardships on the parents. Supposing there is my brother and he is called up as an accused. It is a shame not only for him but for me, my relations and to everybody else; and also you allow the police to interfere in domestic affairs and they will come and blackmail and so there will be immense troubles. So I think you may reconsider as to whether these cases, without serious injuries, should be handed over to the police.

Q. Even if the offence is made non-cognizable, according to you, and unless some cases are brought to court, do you not think that the mere retention of this law on the statute book is a great defect?

A. Therefore I agree with you. It will do some good but not that amount of good which you desire at once.

Q. Therefore from the very nature of things it is desirable that proper cases should be brought to court. Unless you make some provision to bring such cases to court, whether there is injury or not, how will this provision work?

A. There is naturally the tendency in every family not to bring his son-in-law into court.

Q. Who should be the complainants?

A. Either the guardians or the girl should be the complainant.

Q. Supposing the guardians live at a distance of 15 or 20 miles, will it not be long before they will come to know this offence? Don't you realise that the tendency of these people is not to bring these cases to court at all?

A. I agree with you.

Q. So is it not a fact that unless some provision is made to bring these cases to court, the law will remain a dead letter as it is now?

A. I fully see your point.

Mr. Shah Nawaz: Supposing a girl is married at 13 or 14 and when they are thrown together, won't the marriage be consummated?

A. It will be consummated.

Q. And then if we accept your point of view that only the girl's guardian should bring a complaint, that it should be made compoundable and so on, don't you think that no case will ever come to Court if there is no injury?

A. I don't think that any case will come to court.

Q. Then what is the good of having such a law on the statute book?

A. In order to save the public opinion.

Q. If that be your view, will you not put 14 as the minimum age of marriage and 16 as the minimum age of consummation.

A. I say that both should be identical, i.e., 16. But you shouldn't penalize it.

Q. Do you mean to say then that the law should remain a dead letter?

A. It may not be so but the effect will be on the statute book.

Q. Supposing a boy of 18 consummates with a girl of 11 or 12, who is going to prevent the boy from doing this?

A. The guardians will prevent the boy. It is better to leave these matters to guardians instead of dragging the families to courts.

Mr. Kadri: Do you want a change in the law of guardianship so far as the Hindu girls are concerned?

A. No, only so far that for the purpose of bringing these cases the guardians will be fathers and mothers.

Q. May I take it that you are in favour of raising the age to 16 in extra-marital cases?

A. I would even raise it to 18.

Q. Are crimes of seduction common in your part?

A. There are crimes of seduction.

Q. You have made useful suggestion to bring seduction cases and rape cases under the category of special report cases. What do you mean by special report cases?

A. There are some cases which are treated as special report cases as for instance dacoity. So these cases can be brought under this category.

Q. Have you got common and special jurors in your Districts?

A. Yes.

Q. Are the special jurors educated?

A. They are more educated than common jurors.

Q. Do you think that they are in a better position to judge all the merits of the case than the common jurors?

A. Yes. Further I have a very bitter experience of these common jurors.

Q. Do you think that if the registration of births is properly carried on and a penalty is made for non-reporting of births, there will be no difficulty in determining the age?

A. Yes.

Q. Do you think that there is any utility in having a marriage register?

A. Yes. I favour the suggestion about the marriage registration because in 50 per cent. of the adultery cases the factum of marriage is disputed. So if there is a marriage register, it will be of immense help to us.

Written Statement, dated the 14th November 1928, of Miss LEELA NAG, M.A., Deepali Ladies' Association, Organiser, "Nari-Shiksha Mandir" (Women's Educational Institute), 3, Bakshi Bazar Road, Dacca.

1. There is dissatisfaction with the existing law as to the age of consent because:

(a) (Reference to clause 5, section 375, Indian Penal Code), a girl of 14 is not sufficiently mature to give intelligent consent.

(b) There is no provision for penalising sexual connection by a husband with his own wife, she being about 13 but under 14. There is no reason why this should not be penalised on considerations of health, since in both marital and extra-marital cases the health of the girl will be injured alike.

2. There should be an advance on the present law because:

(a) Although owing to tropical climate the attainment of puberty is earlier than in cold climates, puberty does not signify

physical, and mental development necessary for child bearing. Hence, although puberty is attained between the ages of 13 and 14, age of consent should be raised.

- (b) Though raising of the age of consent will not put effective stop to immature sexual connection within the marital state, yet it will be effective in extra-marital cases, e.g., cases of seduction of rapes by strangers of traffic in minor girls for immoral purposes.
- (c) It may help to some extent to put off child marriage. But the difficulty is that the public is ignorant of the laws regarding the age of consent, and unless there is expensive public propaganda, this cannot be made effective.

3. Crimes of seduction and rape are common in East Bengal. I have no knowledge whether the amendment of 1925 has been effective in lessening these offences. In my opinion the law as to age of consent cannot be made very effective in marital cases (since cases of immature sexual connection never come to court). But it can be made effective to a greater extent in extra-marital cases, if exemplary punishment is given and penalty enhanced and rigorously enforced.

4. (a) To my knowledge, it has not postponed the consummation of marriage.

(b) The general public is scarcely aware of the law or the amendment.

(c) It has not been effective in putting off marriage beyond 18.

5. Generally between the age of 13 and 14, girls attain puberty in Bengal. I don't think; the age differs in different castes, etc., in Bengal.

6. I don't think cohabitation within the marital state is uncommon under any of the circumstances enunciated in clauses (1), (2) and (3).

These cases never or very seldom come to the law courts.

7. Religious injunction is that consummation of marriage should take place after the attainment of puberty. Excepting one or two 'Samhitas' like Parasara or Shambarta (even these recommend only marriage before puberty but not consummation of marriage before puberty), the principal law givers (like Manu, and his commentators, Bodhayana, Shusruta and others) have denounced even child marriage not to speak of consummation of marriage before puberty. By way of example, a couplet of 'shusruta' says:—

9. I don't think puberty is sufficient proof of physical development necessary for child bearing. Consummation may be justified at least after two years after puberty (i.e., at 16), so that it may not cause injury to the girl or her progeny.

10. She can give intelligent consent at 16.

11. I have knowledge of many cases where the health of the girl has been ruined because of cohabitation before physical development. There are hundreds of cases daily coming to light in Bengal where the girl-wife has been forced to sexual connection which she dreads. The victims are generally of the age between 12 to 15. The details of some of these cases have been published from time to time in Bengal dailies and monthlies, (*Ananda Bazar*, *Sanjibani*, *Forward*, *Prabasi*, etc.). These are only an infinitesimal portion of the total number of homicides that are going on behind the legalised bond of marriage.

12. Yes. Without doubt these are responsible for the abnormal maternal and infantile mortality. Besides early child bearing before the physical and mental development of the mother unquestionably falls upon the mother's as well as the child's health and mind and thus brings about an object degeneration upon the entire population.

13. Among the educated classes there is wide spread feeling that the early consummation of marriage should be stopped. But as yet the feeling has not found expression in any organised movement or well constituted demand.

14. Not among the educated classes.

16. Puberty would be one of the sure factors for determining age.

17. Not in principle. Marital and extra-marital cases are equally bad from considerations of the health of the girl and the child. But difference should be made with regard to penalty. In marital cases the maximum punishment should be transportation for life while in extra-marital cases, capital punishment should be imposed if the victims' life is endangered.

20. I think both the Bills should be legalised; otherwise sexual connection with minor girls cannot be stopped effectively even if early marriages are penalised, sexual connection at a immature state will not be stopped in marital cases. Extra-marital cases will not come within the child marriage Bill. Hence the necessity of consent bill.

Without child marriage bill, early consummation of marriage will not be stopped, because the offences (under the consent bill) wide in marital cases will never come to court. Hence the necessity of child marriage bill of the two alternatives the public would rather appreciate the raising of the age of marriage than curtailing the rights of the husbands.

21. Education and social propaganda would help no doubt but in a country where illiteracy is hopelessly proverbial, that process will be too slow, since there is no prospect of immediate compulsory primary education for the country.

Under the circumstances, legislation is the only way to put a stop to the increasing deterioration of the health and mind of a whole nation. Besides these legislation by raising the minimum age of the marriage would provide greater facility for the education of girls. I would support both the measures.

Oral Evidence of Miss LEELA NAG, M.A., Deepali Ladies' Association, Organiser, Nari-Shiksha Mandir (Women's Educational Institute), 3, Bakshi Bazar Road, Dacca.

(Dacca, 9th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal, presided.)

Mr. Kanhaiya Lal: Are you connected with the Deepali Ladies' Association?

A. Yes. It is a social Reform Association.

Q. What is the object of this Association?

A. Social, Educational and welfare of women.

Q. What is the number of ladies in this Association?

A. About 300 at Dacca and about 100 at Calcutta.

Q. Is your Association a branch of the Calcutta Association?

A. The Calcutta Association is the branch of this Association.

Q. Have you all kinds of women as members?

A. Yes. Excepting the Mahomedans all the other communities are represented here.

Q. Do not Muhammadans express their willingness to join your association?

A. I don't think that they are sufficiently inclined to join this association.

Q. Are the Headquarters of this Association at Dacca?

A. Yes.

Q. Have you placed this memorandum before your Association or is it your own views?

A. I think that it is the view of almost all the members of the Association.

Q. Did you hold any meeting for this purpose?

A. We had friendly discussions about this.

Q. Are you also the Organizer of the Nari-Shiksha Mandir (Women's Educational Institute)?

A. Yes.

Q. What is this organization?

A. This is an Educational Institution for women of all classes. There is also a section for adult women.

Q. Is early marriage prevalent amongst any community here?

A. I think that early marriage is prevalent amongst the Brahmins and not amongst the Vaidyas and Kayasthas.

Q. What is the usual age of marriage amongst the Brahmins?

A. I think it is between 12 and 13.

Q. What is the usual age of marriage among the Kayasthas and Vaidyas?

A. They don't marry their girls before 16.

Q. What is the usual age for consummation? Is it done immediately after marriage or some time after marriage?

A. I think amongst these people, it is shortly after marriage.

Q. When does consummation of marriage take place amongst the Brahmins?

A. I have no knowledge about that.

Q. What is the usual age when Brahmin girls attain puberty?

A. I don't know.

Q. Have you come across any cases amongst the Brahmins where evil results have followed on account of early consummation and early maternity?

A. Several cases I have come across.

Q. Do you belong to the Kayastha caste?

A. Yes. There is also early marriage amongst us but it is not so prevalent. The cases are fewer.

Q. You say you know several cases amongst the Brahmins where evil results have followed on account of early consummation and early maternity. Now what is the remedy you suggest for this state of affairs.

A. I think that the age should be raised.

Q. What minimum age would you recommend for marriage?

A. Sixteen for girls and 18 for boys at least.

Q. Do you know that Mr. Sarda proposes 14 for girls and 18 for boys?

A. Yes.

Q. Do you think that should be accepted as a first step?

A. If you cannot have 16, we should rather have 14.

Q. Will you be prepared to go below 14?

A. No.

Q. Do you want both the marriage law and the consent law?

A. Yes. If we cannot have both I would prefer the marriage law.

Q. You say that for a marital offence the maximum punishment should be transportation for life. Do you know that under the present law the punishment is 10 years imprisonment or transportation for life if the girl is below 12 and two years' imprisonment or fine or both if she is above 12?

A. Yes.

Q. Do you want to retain the present punishment or do you want to increase it?

A. I would retain the punishment as it is now.

Q. Similarly as regards the extra-marital offence, would you retain the present punishment or increase it?

A. I say that there should be capital punishment if the consequences are serious.

Mr. Kadri : You have quoted texts from Susruta. May I take it that you are a Sanskrit Scholar?

A. I have only a general knowledge.

Q. In paragraph 11 you say that you have knowledge of many cases where the health of the girl has been ruined because of cohabitation before physical development. What is the age in your opinion at which full physical development is attained?

A. Sixteen.

Q. What are the injuries you noticed in these girls whose health was broken?

A. These girls are very weak and their children are also very weak.

Q. Do not the children live long in such cases?

A. They are often still-born.

Q. Do you mean to say that in these parts crimes of seduction and rape are very common and reports thereof are published from time to time in the Bengali Dailies and monthlies?

A. Yes.

Q. Have you any personal knowledge of these cases or are you only reading these from papers?

A. As Secretary of the above Association, I have had occasions personally to come across these cases.

Q. How many cases did you come across?

A. At least 3 I came across.

Q. What was the object of seduction, i.e., was it to sell the girl for immoral purposes?

A. For brothels and for private purposes. The girls were seduced.

Q. What did you do in those cases? Were those people who committed these crimes prosecuted?

A. If we can get hold of the persons, we can prosecute them but we got hold of one culprit who came from a respectable family but we did not take him to Court.

Q. What was the age of the girl in this particular case?

A. She was aged above 18.

Mr. Shah Nawaz : In paragraph 13 you say that among the educated classes there is a wide spread feeling that the early consummation of marriage should be stopped but as yet the feeling has not found expression in any organized movement or well constituted demand. Have you come across educated Brahmin ladies?

A. No. Brahmin ladies are not very much educated here.

Q. Are the Vaidya ladies educated?

A. Some of them are educated.

A. Are educated ladies really in favour of preventing early marriage and early consummation?

A. They feel that these are evils but I don't think that they have any definite opinion about these matters.

Q. Have you come across any illiterate ladies from the country side?

A. Not very many.

Q. Will you tell me what is their feeling about these questions?

A. Every one feels the harm of early marriage and early consummation. I often go to the villages and speak to them, and they realize that early marriage and early consummation are evils.

Q. But we are told by men that these women do not care at all about these things?

A. I don't think that it is true.

Q. Do educated girls or illiterate girls desire to have a voice in the selection of their husbands?

A. Yes.

Q. Should they agitate for it?

A. I cannot answer this question.

Q. You have put down 16 both for marriage and consummation. Is that your idea?

A. I will suggest 14 for marriage and 16 for consummation, if 16 is not possible for marriage.

Mr. Bhargava : Amongst the Vaidas what is the percentage of marriages which are celebrated when a girl is below 12 or 13?

A. I cannot give you the exact percentage. Vaidyas do not give their daughters before they are 16.

Q. Similarly what will be the percentage of girls amongst Kayasthas who are married below 12 or 13?

A. 80 per cent. of the girls are married after 15 or 16.

Q. Amongst the Brahmins is there any religious notion that their girls should be married before puberty or is it only so, due to custom?

A. I don't know how to answer this question.

Q. As regards the Vaidyas and Kayasthas who marry their girls below 13, is this due to custom or due to a religious notion?

A. I don't think that it is actually due to custom but perhaps there may be some other reasons. It may be due to economic or some other handicap.

Q. In paragraph 13 you say that among the educated classes there is a widespread feeling that the early consummation of marriages should be stopped but that the feeling hasn't found expression in any organized movement or well constituted demand. Am I to understand from this that there is no society here for popularizing or for condemning early marriages?

A. There may be occasional meetings but there is not any constituted society here.

Q. May I take it that whether or not there is any dissatisfaction amongst the orthodox people, you are for legislation?

A. Yes.

Mr. Mitra : You say that about 80 per cent. of the Vaidyas and Kayasthas marry late. Do you include in this the Kayasthas and Vaidyas who are living in the mofussils also?

A. I was speaking more of the towns and more of East Bengal.

Q. May I take it that you have no experience of the villages?

A. No.

Q. Can you tell us approximately what is the percentage of people amongst whom early marriages do take place?

A. I cannot give you the approximate figure.

Q. Will it not be fair to say that almost about 80 per cent. practise early marriages?

A. I cannot say that.

Q. If there is a marriage law fixing the age at 16, will there be a necessity for a consent law?

A. Not necessary.

Q. In paragraph 17 you suggest that the maximum punishment in marital cases should be transportation for life. Don't you think that the severity of the sentence itself will lead to the non-reporting of the case.

A. On the other hand the severity of punishment may check the offences.

Q. Is it not a fact that very few cases of marital offence are reported?

A. That is true but considering the rape cases I think if the punishment is more severe, all those cases may be checked.

Q. Have you come across anybody who religiously thinks that there are shastric injunctions to marry their girls before puberty?

A. I don't know anybody.

Q. If the marriage law is passed, are you for making exemptions in suitable cases?

A. I don't like it.

Q. Supposing a man has got two or three daughters, he might say that there will be less expense if he gets married his two daughters at one and the same time or there might be an old man who would like to see his girl married before he dies. In such cases would you exempt these people from the marriage law?

A. Even then I am not for exemptions considering the consequences to the girls.

Q. In fact it has been suggested in Southern India where the orthodox people follow the scriptures more strictly that the consummation of marriage may be postponed even if the marriages take place at an early age. Do you think that will be possible here?

A. If that is possible here, I have no objection to marriages being done early. But I don't think that it is possible here.

Mrs. Nehru : Is the education of women in towns here common?

A. Lot of girls are educated.

Q. Can you tell the percentage of girls who are going to schools?

A. There are high schools for girls in Dacca. One has been started last year. There are three schools. In the Government schools there are about 500 girls, in the other school which has been started two years ago there are about 150 students and in the third school there are 600 girls.

Q. How many Mahomedan girls go to these schools?

A. I don't think that there is a single Muhammadan girl. In the school that has been recently started there are one or two Muhammadan girls in the adult section.

Q. Are there primary schools here?

A. Yes.

Q. Do Muhammadan girls go to them?

A. Yes.

Q. How many primary schools are here?

A. There are about 10 or 12 in Dacca.

Q. Are the boys and girls mixed in these primary schools or are these only intended for the girls?

A. These are only for girls.

Q. Upto what age do Muhammadan girls attend these schools?

A. Upto their tenth year, they attend these schools.

Q. Are these schools in villages about Dacca?

A. These are primary schools.

Q. Do any village girls after finishing their studies come to towns for higher course?

A. I think they come. There are three hostels here for girls.

Q. How many girl graduates are here?

A. I think 50 or 60.

Q. What are they doing?

A. Some of them are engaged in public work, some of them are teaching in the girls' schools and so on.

Q. Do any class of people here still favour the idea of girls' marriages before puberty?

A. I don't think that is the idea amongst the educated classes.

Q. Besides the educated classes do other people still follow pre-puberty marriages?

A. I don't know if they care very much for religious injunctions. Perhaps they might do it on account of social oppression.

Dr. Beadon : You say in your answer to question 11 that there are hundreds of cases daily coming to light in Bengal where the girl-wife has been forced to sexual connection which—she dreads and that the victims are generally of the age of 12 to 15. Have you any personal knowledge of these cases?

A. I have heard so.

Q. Have you seen any here in Dacca?

A. I had many occasion to hear of these cases which are true. I know those are true. I may not have any personal connection but I have heard from my friends that they are true.

Q. Can you give us details of one or two cases?

A. I know of one case.

Q. What is the age of the girl?

A. The age of the girl was 12 and she did not like to go to her husband. The father of the girl went to court in order that she might be kept with him until she gets older but the husband's people wanted to take her away. The father sought for protection that she may be ordered to live with him until she is older but the court said that it couldn't do anything and the husband forced his way to take her away.

Q. Do you know anything about this case afterwards?

A. No.

Q. To what caste did this girl belong?

A. I don't know.

Q. Was she educated?

A. No.

Q. Were the parents wealthy or poor people?

A. They are respectable people.

Q. Had the girl to go to another town?

A. Yes.

Q. Did this happen in Dacca?

A. It happened near Dacca.

**Oral Evidence of K. B. QAZI ZAHIRRULA HAQ, Mr. K. SHAB-
UDDIN and Mr. KAZIMUDDIN AHMED, on behalf of the
Dacca District Anjuman.**

(Dacca, 9th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal, presided.)

Mr. Kanhaiya Lal : Do you represent the Dacca District Anjuman, Dacca?

A. Yes.

Q. What is the number of the members of your Association?

A. About 300.

Q. They all belong to Dacca City?

A. To the whole District.

Q. Have you been deputed by your Anjuman to give evidence before the Committee?

A. We have been elected by the Executive Committee to represent the views of the Anjuman before this Committee.

Q. May I know what is the usual age of marriage among the Muhammadans in this part of the country?

A. There is a difference between different classes. In the higher classes the marriage age is 15 or 16.

Q. They begin from 14?

A. Even higher.

Q. What about the middle classes?

A. The same among the middle classes. Among the lower classes it begins from 10.

Q. Can you tell us what is the practice about consummation of marriage?

A. It takes place generally after the attainment of puberty.

Q. Are there also cases of consummation before puberty?

A. In some cases the formality of Nikah is gone through but the consummation is postponed till after puberty.

Q. When do the girls generally attain puberty?

A. In the lower classes puberty comes earlier.

Q. At what age?

A. Sometimes at 11 but generally at 12.

Q. Among the higher classes?

A. One year later, i.e., 13.

Q. Is any interval maintained between consummation and puberty?

A. Immediately after puberty the girl is sent to her husband.

Q. Have you come across any evil results of early consummation?

A. I do not know of any particular cases.

Q. Do you think that the mothers have suffered in consequence of early consummation in health or strength?

A. There is a general suffering in health. Among the lower classes the chief reason of infantile mortality is the ignorance of the laws of hygiene and their economic conditions.

Q. But does not early consummation weaken the constitution or devitalise the women in such a manner as to render them physically debilitated.

A. I am not a medical man and so I am not certain about that fact. But in my opinion as soon as the girl attains the age of puberty it is an indication from nature that she has attained a condition fit for motherhood and that is the injunction of the Mohammadan law also. According to Mohammadans puberty is the sign of maturity but there is no age limit imposed by the Mohammadan law.

Mr. Shah Nawaz: What do you say, puberty is the sign of maturity according to the Mohammadan law?

A. I mean, as soon as the girl attains the age of puberty she has got the full right of giving consent to marriage. That indicates that she has got the sense enough to consent or not.

Q. You infer from that that she is fit for motherhood?

A. My idea is that that is Nature's indication that she is fit for consummation.

Mr. Kanhaiya Lal: But don't you recognise a certain amount of difference between full development and the commencement of puberty?

A. I don't see that there is.

Q. Would it not be an advantage to postpone consummation till after full development is attained?

A. There ought to be no hard and fast rule about it. I will however prefer that consummation should be postponed till after full development.

Q. Apart from law, what is the interval that you would introduce between the proper age for consummation and puberty?

A. At least a year.

Q. May I know what is your objection in that case to legislation fixing a period which can be one year after puberty?

A. The liberty that has been granted by God's law I would not like to be interfered with by any secular law?

Q. But are you aware that there is even now a law fixing the age for marital cases at 13 and don't you think that that is an interference with your religious law?

A. That is an interference.

Q. So far as the higher classes are concerned there is no interference because puberty is generally attained at 13 and you have therefore no objection to the law being kept as it is?

A. No objection, can't help it.

Q. It has been pointed out that there is a very heavy infantile mortality both among Hindus and Mohammadans and also there is very heavy maternal mortality partly owing to early consummation and early maternity?

A. That may be a cause, but the chief causes are the economic causes.

Q. But if it is proved that part of it is due to early consummation don't you think that the matter requires some remedy?

A. It requires.

Q. What remedy can we adopt except either fixing the minimum age of marriage or raising the age of consent? What is your objection to that?

A. That should not be done by law but by custom and social propaganda. I have no faith in any law being enforced for making the thing successful.

Q. Is there any difficulty in fixing the minimum age of marriage?

A. That will be going against our Mohammadan law.

Q. Mohammadan law does not fix any age of marriage?

A. Our law permits the marriage of a boy and girl at any age the guardians like. If we accept the proposal that a certain age should be fixed for marriage or consummation we go against the law of God.

Mr. Bhargava : That is not going against the law. Is it restriction of liberty?

A. Yes.

Mr. Kanhaiya Lal : Don't you think that it is desirable that there should be some legislation to prevent marriage or consummation at an early age?

A. I am an old man and a conservative man. I believe that God's law should be more thought of than man's law. When God has given the man the liberty of marrying his daughter at any age he likes why should we interfere?

Q. Suppose there is no marriage legislation what objection is there to age of consummation being fixed so that the evil results may be avoided?

A. This restriction will produce more evil effects than good effects.

Q. In what way?

A. In many ways.

Q. You are afraid of interference by the Police. Suppose we make the offence non-cognizable?

A. There is already a law upto 13.

Q. Medical authorities say that there have been cases of injury at 13. Taking that into account a suggestion has been made that it should be raised to 16.

A. May I ask how many cases of breaches of the law have been brought to the cognizance of the police?

Q. There have been one or two cases every year in every province. Khan Bahadur Kadri himself tried a case in Dhulia. Cases are occurring but they are not many. Even if we raise the age to 14 there won't be many cases but there would be a check.

A. You yourself say there have been only a few cases reported. That does not justify any strict law.

Q. But many happen. All are not thieves, but we have to enact a law to punish theft; there are very few murders, but we have to enact a law to punish murder. Here also for the protection of girls we have to enact the law, so that the injury both to the mother and her progeny may be prevented?

A. There is already a law and under that very few cases have been brought to the cognizance of the police or the Magistrate and therefore no good case is made out for a more stringent law.

Q. If the medical authorities bring to our notice cases of injury resulting from consummation at 13 and 14 and recommend that there should be a further advance, should not an advance be made?

A. But there are other ways of punishing the offender. He may be criminally prosecuted for causing injury.

Q. But the injury is also to the progeny. We are getting a weak race.

A. It remains to be proved that as a race we are getting weak.

Q. Don't you think that there is physical degeneration?

A. I don't think it is on account of early marriage.

Q. Do you admit that one of the causes at least is early consummation and even if it is partly responsible is not some remedy needed. According to medical authorities a girl is not fit for motherhood till 16?

A. I do not accept the opinion that a girl is not fit for maternity till 16.

Q. (To *M. Kazimudin Ahmed*). Is that also your view?

A. As far as the age of consent is concerned I would have it raised to 16 at least.

Q. What about the marriage age?

A. I would have no marriage age.

Mrs. Nehru: You say you don't want any age to be fixed either for consummation or marriage. Would you then rather repeal the present law?

A. It is better. So far as I know the present law has been brought into action in very few number of cases. I don't know of any case in Dacca at least.

Q. That shows if it has not done any good it has not done any harm either.

A. It is ineffective.

Q. May I know the object of the Anjuman you are representing?

A. It is a political association. It has also as its aim the social uplift of the Mohammadans and also the spread of education.

Q. Can you tell me something about the activities of the Anjuman?

A. They have undertaken some educational and propaganda work.

Q. Have they started any schools?

A. They have aided schools. They have subscribed towards the maintenance of some schools. Stipends and scholarships have been given in engineering schools.

Q. Have you started or aided any girls' schools?

A. We have aided one or two girls' schools in villages. They are lower primary girls' schools.

Q. Are they private schools?

A. They are schools aided by the local board and partially helped by the Anjuman.

Q. Is the spread of women's education one of your objects?

A. Not in particular, but it is one of the duties of Mohammadans to educate their girls and boys. Acquisition of knowledge is essential.

Q. Can you tell me the reason why so far the Mohammadan community of this part is so backward in education when you say that to educate the girls and boys is one of the bounden duties of Muslims?

A. There is a difference in the meaning of education. We do not send our girls to schools generally.

Q. May I know what other steps are being taken by the people to educate the girls?

A. Almost all the girls are educated. They can read Koran.

Q. They know Arabic alphabet?

A. They know a little bit. Dacca is a town where Mohammadans generally speak Urdu.

Q. Can they read and write Urdu?

A. They do not generally write.

Q. According to your idea of education writing is not essential?

A. Education in the modern days has a different sense altogether. Girls schools are considered to be the only standard of education.

Q. I want to know whether according to your own ideas your community has been taking any steps to educate the girls?

A. We have been considering all ways and means to give education.

Q. If girls are married directly after puberty is it possible for them to have real good education?

A. The girl who is being educated at home her education is continued.

Q. You mean to say motherhood and even wifehood does not interfere with their education?

A. It does.

Q. I thought because you considered it to be the paramount duty of every Mohammadan to educate his girl and boy you would consider it necessary to give her all opportunities to acquire knowledge.

A. I suppose girls in the higher and middle classes are generally married at 14, 15 or 16. I am in favour of social propaganda for postponing early marriage but I am not in favour of legislation.

Q. You think reform is desirable but it ought to be brought about not by legislation?

A. Yes.

Q. So far efforts have been made to bring about this reform by propaganda. Do you find the speed with which reform is being brought about enough to go on with?

A. I think this legislation won't improve matters. The pace at which reform has been going on will continue.

Q. But the pace is considered to be slow?

A. It is rather very quick.

Mr. Mitra: You are on principle against any social legislation?

A. Yes.

Q. That is the only reason why you don't want any marriage law?

A. Yes. Otherwise I should like to see girls married at a higher age than is done at present.

Q. And they are now married at about 14 in the case of middle and higher classes?

A. Yes.

Q. What is the ideal age that you would like apart from legislation?

A. My idea is that a year should elapse after puberty before she is married.

Q. Is the education of both girls and boys equally binding according to Mohammadan scriptures?

A. Education as understood by us, education as understood by the modern people, is different from the Mohammadan point of view.

Q. Is it a fact that according to Mohammadan scriptures there is no restriction about the age of marriage?

A. There is no restriction.

Q. May I take it you have experience of the villages also?

A. I was born here and brought up here. I have got some property and relations in the villages and I go once a year only to the village.

Q. Will you kindly tell us when are the Mohammadan girls married among the lower classes?

A. At any time. Girls are married even at 2 and 3.

Q. That does not mean consummation?

A. Not at all.

Q. In those cases does consummation take place before puberty?

A. No.

Q. In those cases do not husband and wife come together before puberty?

A. No.

Q. Girls are not sent to the husband before they attain puberty?

A. Guardians are very strict about it.

Q. You say there is no consummation before puberty both among the higher and the lower classes. So if a law is passed fixing the age of consent in marital cases somewhere about puberty, there cannot be any objection because it does not affect the Muhammadan community in any way?

A. This will affect our religion.

Q. How can it, because there is no early consummation. Mohammadans are not at all according to you affected by this law?

A. Our religion is interfered with.

Q. Do you think there is any Muslim scripture which lays down consummation before puberty?

A. There is nothing in the scriptures either to permit or to prevent.

Q. We were told that there is something to prevent.

A. There is nothing against consummation before puberty in the Mohammadan scriptures.

Mr. Shah Nawaz : You mean to say that consummation before puberty is not a sin?

A. There is nothing in the Islamic books against it.

Mr. Bhargava : May I know why you are in favour of postponing the marriage of girls? Is it on account of evil effects of marriage that you are in favour of postponement of early marriages?

A. That is one of the reasons.

Q. What are the other reasons?

A. Other reasons are economical. If boys are married early they are not fit for earning their livelihood.

Q. So I understand that one reason is economic and the other is physical well-being?

A. Yes.

Q. According to you I understand that up to the age of 16 physical evil effects will follow early marriage?

A. I do not fix any age. I said that in my opinion marriage should be postponed one year after the attainment of puberty.

Q. In some cases girls attain puberty at 11 and in some cases they attain puberty at 15. Would you postpone marriages till the age of 15?

A. I do not specify any age.

Q. May I take it that the difference between the age of puberty between low class of people and high class of people among Mohamedans is due to their callings or occupations?

A. I am not certain about that.

Q. Will you agree if I say that it is due to environmental considerations?

A. It may be. Girls in villages especially in lower classes are allowed more liberty to mix with men.

Q. And also from their girlhood the question of marriage and husband are dinned into their ears day and night.

A. That is not the sole question of life but in our country marriage is considered to be one of the most important event of life.

Q. So this early puberty may not come on a girl if she is taken away from village and kept in a higher society in town?

A. Yes, it may happen.

Q. So early puberty is to a certain extent due to early marriage?

A. Early puberty makes early marriage necessary.

Q. And early marriage leads to early puberty?

A. That does not follow.

Q. Is that one cause?

A. I do not think so.

Q. Have you seen girl-mothers of 12?

A. No, I have seen girl-mothers at 13 and 14.

Q. You say that in high class Mohamedans girls are married at 15 or 16 and they become mothers at 17 or 18 and then you have seen mothers at 13 and 14. Have you seen any difference in their physical condition?

A. I cannot say whether there is any difference.

Q. In your experience do first mothers of 17 or 18 and first mothers of 13 or 14 stand the strain of maternity in an equal manner.

A. I must confess that I did not compare these conditions.

Q. Apart from religious considerations will you agree that there should be a law regarding the age of marriage?

A. I am against any enforcement by law.

Q. I understand that you are for liberty?

A. I am against any social reform by enforcement of law.

Q. Why are you against it?

A. Because it does not improve matters.

Q. Supposing the Government or your society passes a law that every boy and every girl should be educated and there should be compulsory free education, would you agree to that?

A. So far as education is concerned I am quite willing.

Q. If a law is passed that any person who has suffered from a certain disease say leprosy should not be allowed to marry, would you like it?

A. I would like that.

Q. Is that not a case of social legislation?

A. That does not come in this category.

Q. You are in favour of a legislation the sole object of which is the physical welfare of the girl?

A. Yes.

Q. We assume that if a man is allowed to have intercourse with a girl of 14 he is bound to injure that girl; are you in favour of that?

A. If it is proved to me convincingly then I will agree to it.

Q. Suppose this is true then you are for this legislation?

A. Yes.

Q. Even the religious considerations would not come in the way?

A. If it is opposed to religion I am against it.

Q. When you assume that a girl of 14 will be injured by a person having intercourse where does the religious consideration come?

A. If a law is passed I cannot help it but I am against such laws.

Q. You will be against it because there will be restriction of liberty?

A. Yes, liberty that has been given to me by God's law should not be interfered with.

Q. Is your Anjuman doing something of social propaganda?

A. No.

Q. Is there any society in the whole of Dacca which is doing something for the postponement of early marriage?

A. Ideas of people are changing.

Q. Is it on account of economic reasons or on account of some other consideration?

A. It is due to economic reasons.

Q. You want to leave it until on account of economic reasons the ideas of people change by themselves?

A. People have already changed and there will be further change in course of time but I am against any law interfering in these matters.

Mr. Shah Nawaz: You know that among the Mohamedans marriage is a civil contract?

A. Yes.

Q. Supposing Mohamedans abuse the power given to them by Mohamedan Law is it not the duty of Mohamedan Government to interfere? Supposing Amir Amanullah makes a law that people marrying more than one wife may not be taken in service, is it all right?

A. If he says that if a man marries more than one wife will be punished he infringes the Mohamedan Law and he is not a Mohamedan.

Q. Do you know that Mohamedans are now prohibited in the Punjab under the Land Alienation Act to pass their property. Do you like that law?

A. I welcome that law.

Q. You are in favour of legislation which will prohibit Mohammedans passing their property to money-lenders?

A. Yes, that is a civil right.

Q. But marriage is also a civil right?

A. That is not a civil right of that kind.

Q. Do you know that in the Punjab the sons of the girl do not hold property. Are you aware that in the Punjab many do not follow the Mohammedan Law?

A. They commit a sin.

Q. You mean to say that all the Punjab Mussalmans are committing sin?

A. If they are doing it they are committing sin.

Q. Are you aware that in Egypt and Turkey they have passed a law prohibiting marriages before 15?

A. Yes, I am aware but I must follow the Quoran and Hadis, I cannot follow Turkey or Egypt.

Q. Do you know that Egyptians are Mohamedans?

A. Yes.

Q. But they do not think it is an interference in their law?

A. They are not Imams. We follow Quoran and Hadis.

Q. Do you think you are in the right and they are in the wrong?

A. Ulemas can make laws.

Q. There are Ulemas in Egypt also? Kamal Pasha has laid down that marriage age should be 18.

A. He has interfered with the liberty of Mussalmans given to them by God.

Q. Is it a desirable thing that Mohamedan girls should become mothers at 13 or 14? If the Mohamedan Kings find that certain things result in evil should they not interfere?

A. We accept your position if it is not against the Quoran.

Q. It is interference in a way for the good of the Mussalman community. If interference is required in the liberty of action of Mohamedans are not Mohamedan Kings bound to respect that for the good of Mussalmans provided it is not against the Mohamedan Law?

A. To restrict the liberty is against law.

Q. Let us know the authority from Quoran that restriction on liberty is against law?

A. God has given us power to marry our girls at any age and any restriction against it is against the law.

Q. Supposing the liberty of action given by God is abused by you, what are we to do?

A. We deny that it has been abused. Has that abuse been proved?

Q. Supposing it is proved then it should be remedied.

Mr. Kadri: Marriage according to Mohamedan Law is a contract and at the time of performance of *nikah* the girl is presented by vakil who has to take her consent. That shows that the girl has some power to dispose of herself. Is it not so?

A. Yes.

Q. Then there is the option of puberty, that is to say if a girl's marriage has been contracted by any relative except the father or grand-father, it is open to her to repudiate the marriage after the attainment of puberty and before consummation. Taking these two circumstances into considerations, is it not your view that the spirit of Islam is that girls should not be married until they are able to make their own choice?

A. That does not follow. It follows that girls are given liberty of selecting their husbands after the age of majority.

Q. If girls are given this liberty of selecting their husbands after the attainment of puberty are we not curtailing that liberty or denying that liberty by marrying them early?

A. No.

Q. Pre-puberty marriages are decidedly against the spirit or Islam. According to Hadis the object of marriage is the production of *auladi saleh* which means strong children capable of serving God and his creatures. Is it not so?

A. Yes.

Q. Can weaklings of 12 or 13 produce *auladi saleh*?

A. There are economic reasons for such marriage.

Q. You said that early marriage was one of the cause of weak progeny. Is it not so?

A. Yes.

Q. If that is one of the cause is it not our duty to remove it?

A. We should prevent the greater evil, namely, that we must not allow the law to interfere with our religion. For instance what is the legal age of marriage in England. I think it is 12.

Q. Yes, but it is not true that these people have reformed themselves?

A. There was no question of reform. Recently there was a law in England fixing the age of marriage at 14 only.

Dr. Beadon : I might make it clear that that was Canon law which was fixed by Roman Catholics but that applies not only to England but to the whole world. Wherever the custom of marriage is higher than that the *patri*s are urged to make the contracting parties raise the age of marriage to correspond with the ordinary custom of that place. Fourteen is the least age but wherever it is possible people should have marriage after 14.

A. My point is that England is a cold country and girls attain puberty later but India being a hot country girls here attain puberty earlier.

Q. It is quite a mistake to think that girls do not attain puberty in England at the same age. Every head of family expects her girls to attain puberty somewhere about 13. It is the same about every girl whether she be in cold or tropical climate.

A. That was my idea only.

Mr. Kodri : You would concede that principles of Islam are not opposed to progress?

A. Certainly not.

Q. And if there is any custom which comes in the way of progress are we not entitled to remove it?

A. Yes.

Q. What do you mean by puberty?

A. Mahiz.

Q. That means sometimes after the first menses, *i.e.*, when the menses become regular.

A. That is why I have suggested one year after the first appearance of menses.

Q. Do you think that girl of 13 or 14 who becomes a mother will be able to look after her children properly?

A. The world is going on.

Oral Evidence of Dr. Y. K. RAO, District Health Officer, Dacca.

(Dacca, 10th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal : How long have you been District Health Officer?

A. A little over 6 years.

Q. You are in charge of the entire Dacca District outside the municipal area?

A. Yes.

Q. What is the system of registration of births in rural areas?

A. It is now being done by the Presidents of Union Boards from last July.

Q. What staff have they employed for the purpose?

A. They have got one clerk. I have got Sanitary Inspectors in charge of Health circles. Reports are taken down by chowkidars, and these reports are sent to the President.

Q. Is there anybody to verify or check?

A. No. This system was started in certain particular areas.

Q. How is the new system working?

A. The time elapsed is so short that I have no definite idea.

Q. Is your sanitary staff supervising the work of births and deaths?

A. The whole system is not complete yet.

Q. Do you think that these men are essential to supervise the work?

A. That will be one of the duties of the Sanitary Inspectors to supervise the work of the chowkidars.

Q. Is there any obligation on the parents to make a report?

A. No.

Q. Are there any rules requiring the parents or guardians to make a report of births?

A. No, I think it would be better.

Q. Is there any act requiring that the report of birth should be made within 8 days?

A. I suggest there should be one like that.

Q. The Assistant Director of Public Health said that there is an Act which requires registration of births within 8 days.

A. It has not been put into practice.

Q. Do you expect better results from Union Boards taking up this work or you are in favour of police doing the work?

A. I expect better results from the new system.

Q. Can you tell us among what communities early marriage is practised?

A. I have no idea.

Q. Are there cases of consummation before puberty?

A. I cannot say.

Q. It has been said that between the ages of 10 and 15 and 15 and 20 more females die than males, is that your impression too?

A. Yes.

Q. The other thing that we want is infant mortality. In what classes of the population is infant mortality greater?

A. I cannot say until I see the statistics.

Q. The third information which we require is the maternal mortality due to child-birth—among what classes is it greater and what is the percentage?

A. I cannot supply these figures as no record is kept. (The witness promised to furnish the information.)

Dr. Beadon: Is osteomalacia common among the Bengali women?

A. It is not common.

Q. Do you meet with cases of osteomalacia occasionally?

A. Yes, I have seen several cases.

Q. How many such cases do you meet in a year—say 5 or 6?

A. About that in the rural areas. I have also seen a few cases in the towns.

Q. Have you come across any cases in which there has been injury as a result of early consummation or early maternity?

A. Yes.

Q. Can you give one or two instances of those that you know?

A. I can supply very few examples. In one instance a girl of about 14 had a child and she suffered from rupture of perineum.

Q. Was it a bad rupture?

A. Yes.

Q. What about the baby?

A. The baby survived but it was very weak.

Q. How long ago did this happen?

A. About 3 years ago.

Q. To what community did this lady belong?

A. She was a Kayasth.

Q. What age do you recommend for consummation of marriage?

A. 16.

Q. Would you prefer to have marriage law or consummation law?

A. I would like to have the Age of Consent raised.

Q. You think there will be greater objection to the fixing of the age of marriage?

A. Yes.

Q. We have been told that the Age of Consent Law has been a dead letter and even if the age is raised it will remain a dead letter. Can you suggest any means of making it more effective?

A. There are certain religious customs which are not being followed now.

Q. What are those religious customs?

A. Previously after marriage the girls were not allowed to go to husbands' house within a certain period usually till after puberty, but it is not being followed now to the same extent.

Q. How long after puberty are girls sent?

A. I cannot say.

Q. Is it a religious ceremony?

A. Yes, it is called Dwiragaman.

Mrs. Nehru: You are Health Officer under the Union Board?

A. No, I am under the District Board.

Q. How many villages are under that District Board?

A. About 300.

Q. Do you keep touring in those villages?

A. Yes.

Q. Have you got a hospital in each village?

A. We have got in all 24 dispensaries for all the villages and there is a sub-assistant surgeon in charge of each dispensary.

Q. Have you been taking any steps with regard to the health of mothers or children?

A. I have been doing some propaganda work; I hold meetings and explain these matters to the ladies. I have opened classes for the training of dais in the villages.

Q. How do you train them?

A. I open a class in the village where there is dispensary and the sub-assistant surgeon there holds classes and delivers lectures. I go there and examine them whether they are up to the standard or not.

Q. Do you keep any register of trained dais?

A. I keep a register.

Q. But untrained dais are allowed to do work?

A. Yes.

Q. Do you find that there is any opposition to trained dais?

A. Yes.

Q. Do you find that the health of women in the villages and children is generally satisfactory?

A. No.

Q. What do you think they suffer from mostly?

A. It is an economic question. They suffer from malnutrition.

Q. Do you find in the villages that women die more than men at certain periods of age?

A. From the records I find that the mortality of females between 15 and 20 is higher than males.

Q. How much higher is it?

A. I cannot tell you as I have not got figures.

Mr. Thakurdas: In the villages do you find any evil effects of early marriage?

A. I do not actually come across such things but I hear.

Q. You must have seen babies of girl mothers?

A. I have seen on my inspection of dispensaries when I do some propaganda work also.

Q. What propaganda work you do?

A. I do propaganda work in preventable diseases.

Q. Supposing law invests you with the duty of doing propaganda work as regards the evil effects of early consummation, will you do it?

A. I am already doing propaganda work with regard to the evil effects of early maternity. As a matter of fact during my propaganda work I do child welfare work.

Q. Do you do this work with the help of magic lantern?

A. Yes and sometimes without it.

Q. Is this work appreciated?

A. Yes.

Mr. Kadri: It has been suggested to us by the last witness that if the Union Board President were to have a scrutiny of the work every month by making enquiry in the families in the village that will be a good thing for correct registration of births. Do you agree?

A. Naturally.

Q. Are your birth and death registers premanently preserved?

A. That is being done from the last July. Before that there was birth registration in the thana.

Q. Under the new rules are the registers to be permanently preserved or are they liable to be destroyed?

A. I do not think they are liable to be destroyed.

Q. What is the incidence of tuberculosis in the rural areas among young mothers?

A. I have come across several cases of tuberculosis of young mothers.

Q. Do you attribute it to the prevalence of the practice of early consummation and early maternity?

A. It all depends on the general condition of the mother.

Q. Do you think there is a good deal of tuberculosis among the young mothers?

A. There are some cases—not many—but in some cases it may be due to bad hygienic conditions and bad nourishment.

Q. Is there much of hysteria?

A. Yes.

Q. What is that due to?

A. That is nervous derangement.

Q. Has it anything to do with early consummation or early maternity?

A. That may have some remote effect.

Q. I suppose you collect village people and give them lectures by lantern slides?

A. Yes.

Q. In the course of this do you know what is their attitude towards early marriage?

A. Most of them are now not at all in favour of early marriage.

Q. If there were a law passed fixing the minimum age of marriage, there will be no discontentment among the people?

A. I believe so.

Q. What is the minimum age which the people in the District will be prepared to accept?

A. My individual opinion is that it should be 16.

Q. Have you had any talk with the villagers about the age of marriage or age of consummation?

A. No.

**Oral Evidence of Dr. BIJOYCHANDRA MOOKHERJEE, M.B.,
D.P.H., Assistant Director, Public Health, Bengal.**

(Dacca, 10th October 1928.)

(Rai Bahadur Pundit Kanhaiya Lal presiding.)

Mr. Kanhaiya Lal: You are the Assistant Director of Public Health?

A. Yes.

Q. How long have you been working in this capacity?

A. I am here in this capacity from the 3rd November. Prior to that I worked here for over a year and before that I worked in the Presidency Division in the same capacity. I am working from 1926 as an Assistant Director of Public Health and prior to that I was District Health Officer, Khluna.

Q. Is there much infant mortality here?

A. I am unable to furnish the details of infant mortality. We wrote to the Public Health Department as the vital statistics are kept there so I have to fetch these figures from Calcutta.

Mr. Kanhaiya Lal asked the witness to furnish the Committee with figures and explained in what form these were to be submitted.

Q. Can you tell us roughly speaking if the infantile mortality is very high in the rural areas?

A. It is about 170 per one thousand births.

Q. Can you tell me why the female mortality is higher than the male mortality between the ages of 10 to 15 and 15 to 20?

A. This is due to child-birth. In some districts you will find that the female mortality is higher in the period of 10 to 15, but now-a-days as education is spreading and owing to economic pressure, early marriage is getting less and less. In my case I was married at the age of 19 with a girl of 12 but I did not get my girl married until she was 15 and so owing to economic pressure the age is slowly rising.

Q. Is maternal mortality partially due to early consummation?

A. I have told you that early marriage is getting less. The girls are now married at the age of 15 or 16.

Q. Do the lower classes marry their girls at these ages?

A. This is being copied by the namasudras. Formerly there was no widow re-marriage prevalent in that community but widow re-marriage has been introduced in that community and this I noticed in Akola. I know of 5 widow re-marriages.

Dr. Beadon: Did these widow re-marriage take place recently?

A. These widow re-marriages took place some two years ago.

Q. Do you find tuberculosis here?

A. In the towns they are spreading but formerly in the villages there was a less number of cases but now we find it is very common there also.

Q. Why do you find tuberculosis common in villages?

A. When one of the members of the family gets tuberculosis, the other members of the family eat and drink with him so much, so the other members of the family also get tuberculosis.

Q. Are there any communities in which late marriages take place as a rule?

A. The educated communities observe late marriages.

Q. Do you know of any cases where the early maternity has resulted in serious consequences either to the mother or to the child?

A. I am not at present able to tell you anything about this.

Mrs. Nehru: Do the figures that you have given relate to Dacca?

A. Yes.

Q. May I take it that you have experience of Dacca?

A. Yes.

Q. Have you experience of other districts also?

A. Yes.

Q. Do you know what is the age of marriage in the villages?

A. This varies according to the castes. In some castes the age of marriage is very high and in others it is very low. In the higher classes the marriageable age is rising considerably.

Q. What is the lowest age of marriage amongst these higher classes in villages?

A. 15 to 16.

Q. Similarly what is the age of marriage in the lower classes?

A. 16.

Q. What is the proportion of lower classes to the higher classes in the villages?

A. In some villages it might be ten per cent. and in others it might be 50 per cent.

Q. What is the age of consummation among these two classes of villagers?

A. I am not in a position to tell you that.

Q. Can you not say at least what is the age of consummation amongst the lower classes?

A. Their custom is that when girls are married early no consummation takes place until the girl has attained puberty.

Q. What about the higher classes?

A. The girls in the higher classes are married after puberty.

Q. Does any time intervene between the attainment of puberty and the consummation of marriage?

A. Sometimes it is so, but as soon as the bridegroom is in the father-in-law's house, there is consummation of marriage, otherwise it is postponed.

Q. Can you tell me what is the age of puberty amongst these classes?

A. It varies according to the health of the girl. The average age will be 13.

Q. Is there any difference in the age of puberty in these classes?

A. It is always the same.

Q. Is women's education popular in your part of the country?

A. There is primary education for girls.

Q. Do you have primary schools in all villages?

A. Yes.

Q. Is it according to the population that you have schools in different places?

A. This information will be supplied by the Inspector of Schools.

Q. How many villages out of those of which you have experience, have got schools?

A. At least 33 per cent. have got schools, i.e., 1 school for three villages.

Q. Do any girls go from any of the villages for higher education?

A. Sometimes they do go, but the number might be insignificant.

Q. Are there many cases of rape and seduction in this part of the country?

A. I am not in a position to tell you that.

Mr. Thakurdas: You say that marriages usually take place at the age of 10 amongst the upper classes and then consummation does not take place before the attainment of puberty, i.e., below 13. Am I to understand that during these three years the girl remains at her father's house and never goes to her father-in-law's house?

A. Yes. The bridegroom also never visits the father-in-law's house.

Q. What about the registration of births and deaths in the rural areas? Are they working satisfactorily?

A. They are reported by the village chowkidar to the thana officers and at present the president of the panchayat does it, and the register is kept by him.

Q. You say that the president of the panchayat keeps the register. Does he preserve it?

A. At the end of the year this register is sent to the Collectorate and there it is preserved.

Q. Are those registers attested by Revenue Officers?

A. Some responsible officer must attest it.

Q. Are all the births and deaths entered in the register?

A. Sometimes they are not.

Q. What percentage would you put it at?

A. 2 per cent. of the cases are not entered, and others are entered.

Q. Is there any statutory obligation on the parents to report the births and deaths?

A. There is.

Q. According to what act there is the statutory obligation on the parent to report?

A. According to the Birth Registration Act, there is the obligation on the parent to report.

Q. Is this obligation of reporting imposed upon the parent or upon the village chowkidar?

A. It is imposed on the parents.

Q. You have said that generally in the villages the population of the higher classes ranges between 10 to 50 per cent. So does it not follow that the percentage of child marriages is much greater than that of adult marriages?

A. Yes.

Q. You say that you have drawn your conclusion from the statistics you have got, viz., since late years child marriages have begun to disappear and therefore the mortality of females between the ages of 10 to 15 is not greater than that of males at these ages. But as you say now that if the percentage of child marriages is much greater then you cannot draw such a conclusion as mentioned above. Is it not so?

A. I have said two things. As the education is spreading the child marriages are disappearing and the lower castes are copying those higher castes.

Q. Since when this movement is going on?

A. Since ten years it is going on.

Q. You say that the mortality between the ages of 10 to 15 is not greater amongst the females than the males because the early marriage is disappearing on account of the new movement which is going on for the last ten years. But from your statistics we find that the mortality of females between the ages of 10 to 15 now, even in spite of this new movement, is the same as it was before, i.e., before this movement was started. So may I take that there are some other causes than the cause of the early marriage for this maternal mortality?

A. To some extent early marriage is a cause and there are other causes.

Q. So it cannot be said that the greater death rate amongst the males over the females is due to the fact that early marriages are disappearing, because we find that the percentage of death rate is the same. Is it not so?

A. Yes.

Q. May I take it that so far as your duties are concerned, you have to popularize the principles of hygiene amongst the public in general?

A. Yes.

Q. Supposing the Government made it a part of your duty to popularize the principles of hygiene and to explain to the people the evil effects of early marriage and early consummation, do you think this system will work well?

A. Yes.

Q. After all if there is legislation people should be informed of the evil effects of early marriage and early maternity. Is it not so?

A. Yes.

Q. So do you think that Government should take some sort of propaganda work like the propaganda for cholera and other evils?

A. Yes.

Q. Am I to understand that you are in favour of a marriage legislation?

A. Yes.

Q. You might have experience of the village people and you must be knowing about their feelings, etc. I want to know whether the people in general would like it or whether you personally would favour such an idea?

A. Personally I would favour a marriage legislation.

Q. Do you think that the people would appreciate such a measure?

A. Yes.

Q. What is the minimum age you propose for marriages?

A. The thing is that the age of consent is the primary thing. The marriage may take place early provided if it is not consummated at once.

Q. Do you not realise the difficulty of preventing consummation of marriages after the marriages take place?

A. Now the practice of early marriage is getting abolished.

Q. Supposing a young man of 18 is married to a girl of 13 or 14, generally speaking consummation is not delayed even at present. When boys return home from their colleges and schools, their wives are also there. So don't you think that consummation will take place? Is not this your experience?

A. It will depend upon education. If the boy understands that consummation will be followed by conception and early conception means death to his partner he would rather refrain from doing this.

Q. But before a boy could understand all these things, viz., the evils of consummation and having children, etc., do you not think that a good quantity of water will flow below the bridge?

A. Yes.

Q. So may I take it that you are in favour of a marriage legislation.

A. Yes.

Q. What is the age that you would fix for marriage?

A. 16.

Q. What is the age you would fix for consummation?

A. 16.

Q. May I take it that 16 is a safe age for maternity?

A. Yes.

Mr. Kanhaiya Lal: Could you suggest any way of improving the system of registration of births?

A. Previously the registration of births and deaths was entrusted to the Thana officer. It has lately been transferred to the President of the Union Board and the registration has suffered much. The old system may be resumed and by that I mean the village chowkidar may be called upon to report every birth and death to the Thana officer who will keep a consolidated return for the whole of the Thana. Village rural health organisation schemes have been launched in Bengal which provide a sanitary inspector and a health assistant for each thana. There are also vaccination and inspecting staff and these agencies may be utilised in checking births and deaths and detecting non-reported cases. Report of such detection of unreported cases should be furnished to the District Magistrate for taking necessary proceedings against the chowkidar and a copy of this be sent to the Public Health Department. Such system will lessen the number of unreported cases. The Birth and Death Registration Act IV of 1873 requires the parents or guardians to report vital occurrences within a period of 8 days after event. The parents may be called upon to report the event to the village chowkidar. In the case of non-report both the parents and the chowkidar will be held responsible and both will be liable to prosecution.

Written Statement, dated 14th August 1928, of Mr. GOPAL CHANDRA BISWAS, Vice-President, Bar Association, Barisal.

1. No dissatisfaction appears to have been caused by the increase of age limit as contained at present in Sections 375 and 376 of Indian Penal Code, on the contrary trend of public opinion specially of the educated section seems to be for raising the age limit.

2. Circumstances justifying increase of age limit—

(1) Object of increasing the age limit being to prevent physical and moral deterioration, we think that the present age limit is not sufficient to achieve this object.

(2) Child marriage bill proposes to penalise marriages below 14 and 18 for girls and boys respectively which meets with our approval and penal code should be amended to accord with the Child Marriage Bill if passed.

3. Not frequent.

The amendment of the law made in 1925 raising the Age of Consent to 14 has succeeded in preventing or reducing cases of rape or the improper seduction of girls but to what extent it is difficult to say.

4. In our humble opinion it is not the increase of age limit to 13 years but difficulty of procuring marriage of girls below 13 or 14 for want of suitable bridegrooms which has been effective in protecting married girls against cohabitation amongst educated section of the community.

(1) Once marriages are allowed to be celebrated it is difficult to postpone their consummation after what is known as Dviragaman amongst Hindus or Rasumat amongst Mahomedans, since which husband and wife are allowed to live in the same house and there is nothing to prevent their cohabitation except strong public opinion.

(2) The Amendment of 1926 has done very little in stimulating public opinion in this direction and the difficulty in procuring marriages before 13 or 14 for girls is attributable to economic conditions and desire on the part of educated bridegrooms in having educated wives due to social evolution.

Sarda's Bill, if passed, will be effective in easily preventing these abuses.

5. Puberty takes place generally between 13 and 14 and amongst labouring classes a little later. In cases of child marriage puberty appears to be hastened.

6. Cohabitation is not common amongst Bhadrolog classes before puberty. But amongst ignorant and illiterate classes where child marriage is in vogue cohabitation before puberty is believed to be common.

Such cases very rarely come to court.

7. Religious injunction has very little connection with early consummation of marriage. Amongst the Hindus cohabitation is enjoined only after Garbhadan ceremony which takes place only after puberty.

8. Yes—Garbhadhan ceremony is usually performed in this part of the country. It is not anterior but often posterior to consummation of marriage.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

At least 2 years after puberty physical development may be considered sufficient.

10. 16 years. Before that age girls are not found to acquire mature understanding.

11. No direct knowledge—but reports of such cases have reached our ears though rarely.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality.

Surely it interferes with the intellectual and physical progress of the people.

13. Since 1925 there has been further development of public opinion in favour of the extension of the Age of Consent in marital and extra-marital cases (*vide* answer to question 4).

14. We do not think so.

15. Yes, difficulties have often been experienced owing to want of regular registration of births.

Registers should be permanently preserved and the Act relating to such registration of births should be strictly enforced.

16. We do not think the mere extension of Consent Age would appreciably minimise the difficulty.

17. There ought to be difference in punishment between marital and extra-marital cases. In former cases punishment should not exceed 3 years.

18—19. No.

20. Latter would be more effective and will be more in consonance with public opinion.

21. Penal law will be of more immediate effect than the progress of Social reform by means of education and social propaganda.

**Oral Evidence of Mr. GOPAL CHANDRA BISWAS, Vice-President,
Bar Association, Barisal (Bengal).**

(Dacca, 10th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you the Vice-President of the Bar Association, Barisal?

A. Yes.

Q. How long have you been practising as a lawyer?

A. Since 1893 I am practising.

Q. Has your memorandum been considered by the Bar Association or does it represent your personal views?

A. It represents my personal views. I have also consulted some leading members of the Bar.

Q. Can you tell us what is the usual age of marriage amongst the Hindus in this part of the country?

A. Amongst the upper class I think the marriageable age is 12 or more.

Q. What do you mean by upper class?

A. The upper class includes the Kayasthas and Vaidyas.

Q. We were told this morning that the age of marriage amongst Kayasthas is between 14 and 20. Is it correct?

A. Only amongst the educated classes it is so since very recently. Generally the age of marriage for girls amongst the Brahmins, Kayasthas and Vaidyas is 12 or may be a little more.

Q. What is the marriageable age amongst the lower classes?

A. The average age is 10.

Q. When does consummation take place among the higher classes?

A. It generally takes place after puberty.

Q. When does consummation take place among the lower classes?

A. It takes place before puberty.

Q. Is it common or only rare?

A. It is quite common in these sides. Even in upper classes there are cases of consummation before puberty.

Q. Can you tell us what is the usual age of maternity among the higher classes?

A. The average age is more than 13 or 14.

Q. What is the usual age of maternity among the lower classes?

A. A little less than this.

Q. Have you noted any evil results following early consummation?

A. Of course I have no personal knowledge but complaints have reached me that evil results have followed early consummation.

Q. Would not these evil results affect the mother and the progeny?

A. There is no doubt about it.

Q. What remedy do you suggest to improve this state of affairs?

A. I think Mr. Sarda's bill is the best and the most effective.

Q. What age would you recommend for marriage?

A. 14 for girls and 18 for boys.

Q. Would you as an auxiliary step also have an age fixed for consummation?

A. I will recommend 16. My idea is that as soon as a girl attains puberty, she does not become fit for maternity. There is no full development in her. So I would recommend 16.

Q. You recommend 16 because people should wait for two years at least before consummation is permitted. Is that so?

A. Yes.

Q. Don't you think it is likely that immediately the girl attains puberty the husband and the wife might be thrown together and consummation might take place without the law being brought into operation?

A. That evil practice will continue notwithstanding the legislation.

Q. Can you suggest any method by which these breaches of law can be brought to light?

A. Impossible.

Q. Would you recommend the constitution of vigilance societies in towns and rural areas?

A. Nothing will come out of it. That is my humble opinion.

Q. You know there are only three ways by which these breaches of law can be brought to light, viz., (1) where there is a conception before the prescribed age; (2) where there is an injury and (3) where there are enemies in the villages, prepared to report. But apart from these methods, we want some legitimate method of discovering whether consummation is being effected before the prescribed age. Can you suggest any method for this?

A. I cannot suggest any method.

Q. Do you suggest that women's organizations or social organizations will be helpful in this matter?

A. Very little. They may do some propaganda work and it may produce some effect but that is nothing in comparison with legislation.

Q. In these marital cases at present the law is that upto 12 they are cognizable and after 12 they are non-cognizable. Would you maintain the present system as it is or make any difference in procedure?

A. There ought not to be any procedure. I will leave it as it is now.

Q. Would you like to make the offence compoundable with the sanction of the court?

A. I think that is not bad.

Q. Would you make it compoundable even if the girl is below 12?

A. No.

Q. It has been represented to us that the police should not be entrusted with the investigation of marital cases. Is that your idea?

A. We should make these cases triable by village panchayats.

Q. Is it practicable?

A. If any other agency could be substituted for the police agency, I should like that. For instance the President of Union Board and other responsible persons may be entrusted with this work.

Q. Would you be content if these marital cases are allowed to be investigated by higher officers of the police like the Deputy Superintendent of Police and none by else?

A. That will be better.

Q. Would you recommend that in all these marital cases a preliminary enquiry should be made before the summons is issued?

A. That is a very good suggestion.

Q. You know now that in marital offences cases where the girl is under 12 go to the Sessions Judge and above 12 go to a Magistrate. Would you recommend that instead of having two separate courts, we should have a matrimonial court consisting of a judge and two non-officials to expedite the trial and inspire better public confidence?

A. It will be far better to do so.

Q. Would you have these non-officials as assessors, or jurors or co-judges?

A. Jurors will be better.

Q. But can we get these men from the right class of people?

A. Yes.

Q. You know the Jurors can only take part in the assessment of the guilt but supposing there are co-judges they can both partake in the assessment of the guilt as well as in the assessment of the sentence. Would you have co-judges or jurors?

A. It would be much better to have co-judges.

Q. It has also been suggested that we should have a system of registration of marriages giving the names of the marrying parties and their ages, etc.. Do you think this will be acceptable to the people?

A. This is a very good suggestion.

Q. On whom would you place the duty of reporting these marriages?

A. On the parents or guardians.

Q. Who should be the registering authority?

A. The Union Boards or the Municipal Boards will do.

Q. Would you recommend that whenever a marriage is reported a marriage certificate should be given to the reporting individual?

A. I agree.

Q. As regards the system of registration of births have you found that it is working satisfactorily?

A. At present it is not satisfactory. In Municipal towns a clerk does all this work. In my opinion separate agencies should be provided for the registration of births and deaths.

Q. Is the registration of births and deaths working satisfactorily in rural areas?

A. In the rural areas also there is a petty clerk of the Union Board who does this work.

Q. To provide separate agencies for the registration of births and deaths is not easy. Supposing we employ the existing agencies and simply ask the superior officers to supervise the working of the system of registration of births and deaths, will not that sufficiently ensure proper registration of births and deaths both in towns and rural areas?

A. That will do.

Mr. Kadri: In reply to question 12 you say that there are not many cases of seduction or rape in this part of the country. We have been told by one witness that there are many instances of Hindu women probably widows over 16 years of age being kidnapped. Is that your experience?

A. I belong to Khulna District and I am practising as a lawyer at Barisal. I have no experience of Dacca or Mymensingh. Such cases are not frequent, I think.

Q. So far as your district is concerned, you don't seem to think that there are many cases of kidnapping of married women or widows?

A. No.

Q. In your answer to question 12, you say you would fix 16 years. I want to know your reason for this.

A. My idea is that two years should elapse after puberty, and that is why I have fixed 16, so that the girl may be physically developed for consummation.

Q. What age would you fix in extra-marital cases?

A. I would fix not less than 16.

Q. Would you be prepared to fix it at 18?

A. I have no objection.

Q. We are told that the registers of births and deaths are permanently kept. May I know what is your experience about this?

A. It is not so. They are not preserved. For instance in my professional career I asked my client to get copies of the registration of births but he returned saying that these registers were destroyed. I think these registers are destroyed within 12 years.

Q. You further state that the Act relating to registration of births should be strictly enforced. What are the defects at present in the working of the act?

A. In villages at present the chowkidars are instructed to report the deaths and births.

Q. Is it not obligatory on the parents under the present Act to report?

A. In the municipal areas it is so, but not in the rural areas.

Q. Do you think that the Act relating to this should be made penal?

A. Yes. It should be made obligatory on the parent to report.

Mr. Shah Nawaz: Are you appearing on behalf of your Association or on behalf of yourself? Supposing we were to have a law fixing the minimum age of marriage, will the Brahmins be opposed to it?

A. Yes.

Q. Will their agitation be serious?

A. It will not be serious or at least not more serious than in 1891.

Q. Do you think it will subside?

A. I think so.

Q. In your answer No. 4 (1) you refer to Rukhast or Rasumat ceremony amongst Muhammadans. What is this ceremony?

A. It is similar to Dwiragaman ceremony.

Q. What is Dwiragaman ceremony?

A. After marriage the wife goes for the first time to the husband's house and that is called "*Navabadhu Agumam*" and for the second time she is going to the husband's house and that is called "Dwiragaman" ceremony and this ceremony takes place in our part of the country after marriage within a prescribed time.

Q. Does the Rasumat ceremony take place before consummation takes place?

A. Yes. Rasumat ceremony has nothing to do with consummation of marriage. It does not coincide with consummation. Rasumat ceremony is really a ceremony for her going over to the husband's house. It is nothing like garbhadhan.

Q. In paragraph 6 you say that cohabitation is not common amongst Bhadrolg classes before puberty. But amongst ignorant and illiterate classes where child marriage is in vogue cohabitation before puberty is common. Have you heard any such cases or can you say positively that cohabitation before puberty is common amongst the ignorant and illiterate classes?

A. I have not got a direct knowledge of this but from conversations with friends I have come to know that this is a common thing.

Q. In your answer to question 7, you refer to some religious injunctions. Do you mean to say that Hindus rely on this religious injunction or do they rely on custom?

A. They don't think much of religious injunction. In this connection I refer to the text of Asvalayana cited in *Nirnayasindhu* which is quoted in Pandit Gulabchand Shastri's *Hindu Law*, Chapter III. The text is as follows: "A (man) shall not approach his wife before the appearance of catanenia; approaching becomes degraded and incurs the sin of slaying a Brahmana by reason of wasting the virile seed".

Q. Have you got many Brahmin members in your Bar Association?

A. Many.

Q. What is their feeling about this pre-puberty marriage?

A. They are mostly opposed to it.

Q. Will you tell me what is the feeling of the educated women and also the feeling of women from country side about these questions of early marriage and early consummation?

A. I think the educated women are very much in favour of an advance, but most of the village women are illiterate.

Q. What is the feeling of these village women about these questions?

A. They are opposed to any change of custom. In a way they are a very conservative people. Our women are quite illiterate and they will oppose any change of custom you propose. But so far as I have consulted many of them, I can say that they entertain the idea that this evil custom is detrimental to our society, and to the moral and physical deterioration of the children and the future progenies, but unwillingly they often become the parties to early consummation in order to please the boy husband and let the boys and girls to mix together early. Of course this ought to be prevented but this is not done.

Q. Are you for raising the status of women socially and politically?

A. Certainly so.

Mr. Bhargava: Amongst the Brahmins in general in your part of the country do marriages take place at the age of 15 or 16?

A. No.

Q. But may I take it that the tendency is to raise the age?

A. Yes.

Q. Am I to understand that the Brahmins, Kayasthas and Vaidyas, i.e., the upper classes will not be opposed to a marriage legislation if we fix the minimum age of marriage at 14?

A. I don't think they will oppose such a legislation.

Mr. Bhargava: Who are the persons who are likely to be affected if the Age of Consent is raised?

A. But they do not like that Government should interfere.

Q. The only fear is that if there is restriction, in some cases it may work as a hardship. But when all the persons in all the communities would be bound to marry their girls after 14 there would be no hardship to anybody?

A. I don't think there will be any hardship.

Q. And there would be no objection.

A. There would be objection in the orthodox section. Their idea is that Government should not interfere in religion. It is useless to tell them that it is not the Government but it is our countrymen who are legislating. They are not convinced of this fact.

Q. Anyhow when you say there is no religious notion so far as the lower classes are concerned, their religious susceptibilities will not be wounded?

A. I don't think. They do not follow religion. They are following custom, they are habituated to it and they think that it is good.

Q. You said there were two ceremonies, Navabaddhu Agamam and Dwiragaman. Both of them take place after the marriage and generally after a period of two years?

A. Dwiragaman takes place after a year, but the other ceremony takes place along with the marriage.

Q. And the Rasumat among Mohammedans?

A. It takes place within a year.

Q. When does the marriage take place usually among the Mohammedans?

A. I think it takes place at an early age.

Q. What is the usual age?

A. In my district, in the lower classes, so far as I know, marriage takes place at 10 or even below that.

Q. And then early consummation must be taking place?

A. Very possibly.

Q. Do many early marriages take place? Is it about 50 per cent.?

A. Percentages I can't give. In coming in contact with Mohammedan tenants I have known that early marriage prevails.

Q. And maternity also comes on usually at 13 or 14?

A. Yes.

Q. You are of opinion that in cases in which the offence has been committed on a girl below 12 it should be non-cognizable?

A. Above 12 they should be non-cognizable.

Q. As regards this investigation by Deputy Inspectors and Circle Inspectors, is this your experience that generally subordinate officers investigate and it is assumed that the Deputy Inspectors or the Circle Inspectors have done it themselves?

A. They only supervise. Mostly subordinate officers investigate.

Q. So that the provision that the Deputy Inspector or the Circle Inspector should investigate will be in theory only.

A. Why?

Q. Because in practice the real work will be done by the Head Constable or some other subordinate official?

A. That may be so.

Q. That is to say, the provision that the Deputy Inspector or the Circle Inspector should investigate the case will be a provision on paper only. When going for investigation they generally go with their subordinates.

A. If they go with their subordinates and they themselves keep quiet and leave everything to them, that may be possible.

Q. You said you were in favour of a matrimonial court being instituted for the trial of these marital cases. May I know in what respect does this offence differ from adultery, kidnapping and such other offences?

A. These marital offences differ in this way that they go undetected and so few cases have come to light. There was that Hari Mathi case and the Criminal Procedure case. The cases have been very few.

Q. I understand then that it is not in the trial but in the paucity of cases that the trouble lies.

A. The offences take place among the near and dear ones and they are not brought to light. In order to inspire greater confidence therefore I thought a matrimonial court would be better.

Q. But an experienced Sessions Judge or a First Class Magistrate of more than ten years' experience possibly do this work in quite a decent fashion.

A. I think they may, but if two or three sit together that will be better.

Q. If three sit together then in your opinion it would work better?

A. Yes.

Q. Do you think Government should undertake this and not mind the expenses?

A. That I can't say.

Q. It may be very costly.

A. It may be.

Q. And the number of cases will not be large?

A. From among the present officers in a district a tribunal may be constituted.

Q. So that three First Class Magistrates would do?

A. There should be one Sessions Judge. The tribunal can be selected from among the officers of the district.

Q. In this case the point in issue is very simple and again the multiplication of courts is sometimes regarded by politicians and jurists with great misgiving because the dignity of the ordinary court is thereby diminished.

A. But the cases are not detected, what is the reason for that?

Q. For detection I will suggest other means. So far as the trial is concerned do you find that the judgments of the ordinary courts do not command confidence of the public?

A. That I can't say. My idea was that the procedure should be same both in marital and extra-marital cases, but since this idea of a matrimonial court has entered my head I give preference to it.

Q. So that ordinarily you would prefer that ordinary courts should try these cases?

A. Yes.

Q. Then you favoured the idea of registration of marriages. Suppose after 5 or 10 years this registration of births is made quite accurate, then may I know how would the institution of registration of marriages affect the question?

A. The age can be easily ascertained.

Q. But the age can be ascertained from the birth register, from the school register, from the vaccination register, from the horoscope and from the oral evidence.

A. All persons do not preserve horoscopes.

Q. But birth registers are available?

A. They ought to be available.

Q. If there is accurate birth registration therefore registration of marriages would be unnecessary?

A. Among the Hindus it would be unnecessary if birth registration is kept correctly.

Q. And similarly about Mohammedans. Marriage is a public affair among both the communities.

A. It is not in the case of Mohammedans. In my experience I have seen very rare cases when the factum of a Hindu marriage has been challenged.

Q. These offences will be enquired into very soon after marriage and if the parents go to report it is very likely that they may give wrong ages.

A. But what harm is there if there is registration?

Q. The question is whether it is necessary. It involves cost, it involves a change and it involves penalty to the general public.

A. If there is registration of births strictly enforced, it is not necessary.

Mr. Mitra: Will you tell us what is the percentage of these educated classes, the Brahmins, the Vaishyas and the Kaisthas as compared to the other classes?

A. Only 30 per cent. will be the educated class.

Q. May I take it that among the rest 70 per cent. early marriage is practised?

A. Yes.

Q. And early marriages sometime in the villages mean marriages at 9 or 10?

A. Yes. In my younger days I have seen marriages at 3, 4 or 5 but now it is 8, 9 or 10.

Q. And from your wide experience you know consummation also takes place before puberty?

A. Yes, in many cases.

Q. To approach the masses by propaganda, by leaflets, lectures and otherwise is very difficult.

A. It is difficult and not effective.

Q. So you think legislation is almost a necessity to prevent this evil?

A. That would be the best remedy and the most effective remedy.

Q. What punishment would you suggest for the infringement of the marriage law? Should it be fine only or you want imprisonment also?

A. There is an opinion of a class of persons that imprisonment should be dispensed with and fine would be sufficient. In my humble opinion fine would do. As soon as there would be legislation it will put a stop to child marriage.

Q. It has been suggested that it will merely be an item in marriage expenditure and it will be a hardship on the poor and the richer classes will not be affected. What do you think of that?

A. I don't think that they will break the law. When the guardians and parents know that a marriage cannot be celebrated before a particular age, the law will not be infringed.

Q. May I take it that the presence of the law on the statute book itself will have a great influence?

A. Oh, yes. Any punishment will do.

Q. You think the Consent Law in marital cases will not be effective?

A. It has been a dead letter in my opinion.

Q. Is it due to the fact that the punishment is very severe?

A. Nobody wants to go to court in these cases.

Q. Is there a greater chance of these cases coming to court if there is fine only?

A. I don't think so.

Q. You think in marital cases there is absolutely no chance of Consent Law being effective?

A. Yes.

Q. In other words you don't want any Consent Law.

A. If we can get a marriage law there is no necessity for it.

Q. If there is no marriage law then you can have the Consent Law but you don't expect much results.

A. No.

Q. You speak of Dwiragaman ceremony. Is there no Garbhadhan ceremony performed?

A. It is performed but it is now going out of use.

Q. Amongst the higher classes or all classes?

A. Amongst the higher classes where marriages take place late. Usually it meant more or less a ceremony sanctioning consummation. It was performed within 16 days of the first menses. It is still performed in some families but it is now going out of use.

Q. As regards marriage legislation you think even if there is opposition in the beginning it will subside?

A. They will put the blame on Government and have the law as an excuse and gradually they will get accustomed to it and the objection will disappear altogether.

Mrs. Nehru: You have said that this law has been ineffective and yet you say that the Amendment of 1925 has succeeded in preventing or reducing cases of rape or the improper seduction of girls. How do you reconcile the two statements?

A. In extra-marital cases. In marital cases the legislation has been ineffective.

Q. Do you think this amendment as far as it affects the marital cases is known to the people?

A. It is known to most of the people.

Q. You have said since 1925 there has been development in public opinion for raising the age. Have any meetings taken place demanding the raising of the age either of men or of women?

A. In a branch of the Hindu Mahasabha the question of fixing the age of marriage was discussed.

Q. Was the question of the Age of Consent discussed in the Hindu Sabha?

A. No. That was at the Dharm Rakshni Sabha.

Q. May I know whether Brahmins have still great influence on people here?

A. They have. Their example is followed by other people. There is not so much influence as in Madras.

Q. Among them is post-puberty marriage practised?

A. The educated among them have post-puberty marriages, the uneducated marry early.

Q. It is not like Brahmins and non-Brahmins in Madras where the Brahmins follow a special code?

A. No.

Dr. Beadon: You say in answer to question No. 6 amongst the ignorant and illiterate classes where child marriage is in vogue cohabitation before puberty is believed to be common. Have you seen any cases of injury resulting from such cohabitation?

A. I have no direct knowledge. I have heard from other people that in such and such family there was early consummation and the child was still-born or died immediately after birth.

Q. You say early consummation is responsible for high maternal and infantile mortality. Have you anything to support that statement?

A. I have not any statistics from experience; that has been my belief.

Q. How do you mean by experience? Can you give any concrete cases?

A. It is difficult to recollect particular cases. I have heard of cases but after lapse of time I may have forgotten details.

Letter, dated the 16th December 1928, from Mr. GOPAL CHANDRA BISWAS, B.L.

In course of my oral evidence before the Age of Consent Committee on the 10th instant at Dacca I referred to a Sloka in Sambarta Sanhita and promised to send the original Sloka in Debnagri characters on coming back to Barisal. I have found it out. It is really a Sloka based on a Sloka from the Rig Veda. The author of the Sanhita has given an explanation of the Sloka from the Rig Veda with important omission only to suit his own purpose in supporting child marriage. When the portion quoted is read with the portion omitted, no doubt is left to one's mind that during the Vedic time child marriage was not in vogue and it was only after several stages of developments that a girl was considered suitable for marriage.

The vedic text with English translation is given in a separate piece of paper herewith enclosed.

सोमः प्रथमो विविदे

गन्धर्वो विविद उत्तरः

द्वितीयो अग्निहे मति

सुरीयस्तु मनुष्याः ।

"O maiden Soma the god of beauty and loveliness espoused thee first of all; then Gandharba the god of grace and accomplishments gained thee thy third lord was Agni the god of heat and energy; but thy fourth consort will be thy human husband"—Rig Veda, Mandal 10, Chapter 7, Sukta 85—1, Ashtaka, 8/40.

The different husbands mentioned evidently indicate the different stages of the girl's development, as Sambarta explains in Sloka 65 of his Sanhita.

The English translation runs thus:—"Soma enjoys the girl at the sight of hair on her private parts; Gandharba gains the maiden on the appearance of the menstrual flow; and Agni possesses her at the sight of her breasts."

N.B.—Sambarta is silent on the point of the girl's fourth husband as it does not support his case for child marriage. *Vide* the next sloka 66 in which he pleads for 8, 9 and 10 years as the suitable ages for the marriage of a girl.

Written Statement, dated the 14th August 1928, of Rai Sahib REBATI MOHAN SARKAR, M.L.C., Dolaipur, Dacca.

1. There is no general dissatisfaction except in a portion of the Hindus holding advanced views. They think the present Age of Consent is too low.

2. There should be an advance on the present law and the Age of Consent should be raised, for with early marriage followed by child-bearing, the health of the mother as also of the issue becomes deteriorate. Medical report show that a woman giving birth to too many children—commencing generally in an undeveloped stage of her health, gets consumption and dies of many diseases. Early cohabitation stands in the way of all sorts of progress, physical, educational, etc., of the girl.

3. The crimes of seduction and rape is not very infrequent in this province. The amendment of the law made in 1925 has not succeeded to a great extent in preventing or reducing the cases of rape and seduction outside the marital stage to 18 years.

4. Very little. It has not been able to postpone the consummation of marriage at all nor it has stimulated public opinion. I propose that the minimum age of marriage should be fixed by law.

5. The girls attend puberty generally between the ages of 13 to 15 years. It differs in some extent, in different communities, or classes, for the girls of those communities who have to do a good deal of manual work (including woman) attend puberty later than those who have not to do any manual labour.

6. Cohabitation before puberty and soon after it and also before the girl completes 18 years is very common in this part of the country. But the cases very rarely come to court.

7. There is no religious injunction for the practice of the early consummation before or at puberty.

8. Yes, the Garbhadan ceremony is usually performed in this province, when marriage takes place before the puberty. Sometimes consummation coincides with the Garbhadan ceremony and sometime prior to it. It is generally performed soon after puberty.

9. I do not consider that the attainment of puberty is any indication of physical maturity to justify consummation of marriage. I think before the age of 16 of the girl there should be no consummation at all.

10. A girl in India under 16 is hardly competent to understand her own affairs.

11. I have seen a good deal of cases where cohabitation both before puberty and after it but before full physical development of the girl resulted in injury to her health and body. In almost all places these prejudicially affected her progeny.

12. In India, specially in Bengal, early marriage and consummation are the main causes of high maternal and infantile mortality. These also vitally affect the intellectual and physical progress of the people to a great extent.

13. It does not seem that there has been a public opinion about this matter and fact calls for and intervention through legislation.

14. It is very difficult to give a straight answer to this question, as the facts are not the same everywhere and they vary with education and occupation along with social condition of the people.

15. The difficulties have always been felt in determining the age. To direct the keeping of a register of birth countersigned by the thana officer or the president of the Union Board in every family and to produce the same to prove the age will, to some extent, minimise the difficulties.

17. The two classes of offences should be separated. The punishment in extra-marital offences should be heavier than the marital cases.

19. The existing safeguard is enough for the purpose.

20. Fixing the minimum age of marriage would be more effective in the marital cases than a penal legislation fixing the higher Age of Consent. But in the cases outside the marital state there is no other alternative I think than raise the Age of Consent to make it effective.

21. Legislation is absolutely necessary to secure the object in view specially at the stage of the society but to have a permanent effect it certainly depends upon the progress that the people make in the society by means of education and other social propaganda of a like nature.

Oral Evidence of Rai Sahib REBATI MOHAN SARKAR, M.L.C., Dolaipur, Dacca.

(Dacca, 10th December 1928.)

(Vernacular.)

(Rao Bahadur Pandit Kanhaiya Lal, Vice-Chairman, presided.)

Mr. Kanhaiya Lal: You are a member of the Legislative Council?

A. Yes.

Q. For how many years have you been?

A. Two years.

Q. You reside in Dacca or Dolaipur?

A. Dolaipur.

Q. May I know what business you are doing?

A. I have got some landed property.

Q. Are you a landholder?

A. Yes.

Q. May I know whether you have been connected with any social reform or public movement in the country besides being a member of the Legislative Council?

A. I am the President of the All-Bengal Namashudra Association.

Q. Do you belong to the Namashudra community?

A. Yes.

Q. Can you tell us what is the age of marriage among the Namashudras?

A. It varies from 11 to 15. But a large percentage marry earlier, at 11 or 12.

Q. What is the percentage of those who marry at 11 or 12?

A. 80 per cent. marry at 11 or 12.

Q. Can you tell us at what age consummation takes place?

A. It is different in different places.

Q. In your part of the country at what age is the marriage consummated?

A. Generally after puberty, but sometimes before puberty also.

Q. Is the number of cases of consummation before puberty numerous or a few?

A. Numerous after puberty and very few before puberty.

Q. Is this practice found in other parts also?

A. In Eastern Bengal this is the custom generally.

Q. Can you tell us if any evil consequences have accrued from early consummation?

A. Yes, I have noticed.

Q. What is the usual age of puberty?

A. From 13 to 15.

Q. What is the usual age of maternity among the Namashudras?

A. 15, 16 or 17.

Q. You tell us there are cases of consummation before puberty?

A. Very rare. I remember only one case of maternity at 13, but generally it is 15 or 16.

Q. Have you found that the mothers as well as the children both suffer on account of early consummation?

A. Both suffer.

Q. What remedy do you propose to remedy these evils?

A. Marriage age should be fixed at 16.

Q. And consummation?

A. If the marriage is at 16, consummation may follow.

Q. Will it be acceptable generally to the people?

A. The educated class will accept. Amongst the uneducated class there will be some opposition at first but they will yield and follow the educated classes.

Q. May I know whether this question has ever been discussed at a conference of your community?

A. There have been resolutions against early marriage.

Q. At what place was the conference held?

A. The last conference was held at Faridpur. It is an annual conference.

Q. Who presided?

A. I presided.

Q. Was any age recommended either for marriage or for consummation?

A. There was no age fixed but the concensus of opinion was that consummation before 16 is detrimental both to the mother and the child.

Q. How many persons were present?

A. There were about 1,500 delegates present and our system is to have 10 representatives for each one thousand people.

Q. They came from all over Bengal?

A. Yes.

Q. What is the population of Namashudras in Bengal?

A. 20 lakhs and 87 thousand.

Q. Were there any ladies present?

A. Very few ladies were present.

Q. Do you have lady delegates also?

A. They were not as delegates but as visitors.

Q. May I know whether this memorandum has been submitted to your association or is it your personal view?

A. It was not settled at the Conference or any meeting. It is the opinion, however, framed in consultation with the leading men of the community at Dacca, Barisal and other places.

Q. Is there any other community which practises consummation before puberty?

A. My idea is among the depressed classes where early marriage is practised it usually happens.

Q. Can you suggest any measures for preventing consummation before the prescribed age?

A. Some means ought to be devised to ascertain the real age.

Q. Why are these offences that are taking place not brought to light?

A. Parents are interested in suppressing these cases.

Q. Can you suggest any measures for bringing these cases to light? Will caste panchayats do anything?

A. The only remedy is to fix the age of marriage.

Q. Suppose the age of marriage as proposed by Mr. Sarda is fixed at 14. Can consummation be prevented between 14 and 16?

A. I suggest that the age of marriage should be fixed at 16. By that only you can prevent consummation before that age and by no other measure.

Q. Can your association report cases of breaches of the law?

A. The association will not interfere in litigation but they will undertake propaganda work.

Q. Has your association got local branches in all districts?

A. Yes.

Q. And you will carry on propaganda work through those agencies.

A. The secretaries of the district associations will be written to undertake propaganda work in this behalf.

Q. Will you make these cases cognizable?

A. I do not like police interference in any case.

Q. After 12 or before 12?

A. Not even below 12.

Q. Then who should investigate and who should report?

A. The President of the Union Board should investigate and report these cases.

Q. Will the Union Boards look after these cases and report them?

A. Being myself a President of the Union Board, I expect that they will undertake this work.

Q. You are the President of which Union Board?

A. I am the President of the Sahampur Union Board. I hope that the Union Boards will be agreeable to carry on investigation.

Q. Is birth registration carried on properly in your part?

A. As President of the Board I am the Registrar of births in my Union.

Q. Are omissions to report punished?

A. I have not yet inflicted any punishment. The Unions do not like to displease their voters and do not punish such cases. Every Sunday the births are registered. A clerk does it. A report is submitted to the Magistrate monthly. Before the submission of the report I send a member to make enquiries locally and then the report is made.

Q. There are no omissions in your jurisdiction?

A. No.

Q. A suggestion has been made that if there is a law fixing the minimum age of marriage and a law fixing the age of consummation, there ought to be

* system of registration of marriages, i.e., reports of marriages be made giving the names and ages of the marrying parties to a prescribed authority so that it might be possible to ascertain whether the law is broken or is likely to be broken.

A. I am not for the registration of marriages.

Q. Then how are we to find out that the law is being observed or broken?

A. You can have a report from the President of the Union where they have a register of births.

Q. If such a system is instituted will the Union President be prepared to maintain the register of marriages?

A. Those who are ready to serve the country will be prepared to do anything, but I am not personally for it. If it is required they will carry it out.

Q. What age would you recommend for extra-marital cases?

A. It should be a high age. It may be 18.

Dr. Beadon: In answer to question No. 11, you say, I have seen a good deal of cases where cohabitation both before puberty and after it but before full physical development of the girl resulted in injury to her health and body. Would you mind giving us details of one or two cases?

A. I remember a case in my own jurisdiction. The marriage was performed at 10 or 11 and the child was born at 13. The mother got consumption.

Q. How long after child-birth?

A. After a year of the child-birth it came to my notice.

Q. What was the age of the husband?

A. 20 or 22.

Q. Was that a recent case?

A. It was some 10 years back.

Q. Do you know of any recent case?

A. I remember a case where the girl was married at 12. The mother died within 6 or 7 months of child-birth of phthisis.

Q. When did she have a baby?

A. A year and-a-half after the marriage.

Q. Were these people fairly well off?

A. They were poor cultivators.

Q. What about the child?

A. After two years the child also died.

Q. When did that happen?

A. Three years ago.

Q. Was that in the Namashudra community?

A. Yes.

Q. Do you know any other cases like that?

A. Sometimes these cases happen.

Mrs. Nehru: What are the Namashudras generally by profession?

A. They are an educated class, some practise medicine and law. There are some in Government service. There are others who are poor and carry on cultivation. The majority are cultivators or carpenters.

Q. What is the condition of education amongst your community?

A. They are having education now, but still it is very limited as compared with the population. Female education is very limited.

Q. When you refer to educated classes, does it mean that they contain educated girls also amongst them?

A. Amongst the educated classes the girls are also educated.

Q. Are there any graduates among those classes?

A. I have heard of a girl having passed the Matriculation examination but none has become a graduate.

Q. Are there any girls' schools in villages?

A. There are a few primary schools.

Q. In the villages of which you are the Union President have you got any girls' schools?

A. I started a boys' school and a girls' school.

Q. How many girls go to that school?

A. About 35.

Q. Do any Mohammadan girls go to that school?

A. No Mohammadan girl goes to the school.

Q. Is it on account of Purda?

A. Yes.

Q. Is consummation before puberty practised among the educated section of the Namashudras also?

A. Not amongst the educated class.

Q. In your statement you refer to rape cases being not infrequent. Can you give any details?

A. I know of cases.

Q. How many cases have come within your knowledge?

A. I know of 3 or 4 cases.

Q. In what period of time and in how much area?

A. 10 or 15 years' time and they were in Dacca Sadar sub-division.

Q. What were the ages of the girls generally?

A. 17 or 18.

Q. Not lower than that?

A. I know of a girl of 14 years being kidnapped. Generally they are 16 or 17.

Q. The cases that you know were not of young girls?

A. No.

Q. Were the offenders mostly Hindus or Mohammadans?

A. Both Hindus and Mohammadans.

Q. And who were the offended?

A. There are both Hindus and Mohammadans. More are Hindus.

Q. What do you think is the object? Do they take them to other provinces?

A. The object is to satisfy their lust.

Q. Which is more, seduction cases or rape cases?

A. There are more rape cases.

Q. Is there any selling of girls?

A. Very rare.

Q. Are the girls deported to other provinces?

A. I have heard of a few cases, but there is none to my personal knowledge.

Q. How have you come to know of these cases? Have you been specially working in this line?

A. Some cases have come to my knowledge as a President of the Union Board and some on account of the Hindu Sabha. I am interested in these matters and the cases are brought to my notice.

Q. You say Garbhadhan ceremony is sometimes prior to consummation, if so, what is the meaning of Garbhadhan ceremony?

A. I mean that consummation follows Garbhadhan.

Q. Will you give me an idea what punishment would you have for marital cases?

A. I can't give you any details. I am not against some small imprisonment.

Mr. Bhargava: What is the social status of Namashudras—are they superior to Vaishas?

A. They are just like Vaishas. We have the largest population in Bengal but we have fallen to the category of depressed classes.

Q. Are you connected with Hindu Sabha?

A. Yes, I am a member of the Hindu Sabha in Dacca District.

Q. So far as the male members of your community are concerned there is a general consensus of opinion that early marriage should be prohibited?

A. Yes.

Q. Does that represent the opinion of the ladies also?

A. Most likely.

Q. Is there a movement in your community to raise the age of marriage?

A. Yes.

Q. Do you also follow Dviragaman ceremony?

A. Yes.

Q. What is the usual difference between the age of a boy and girl in your community?

A. 10 or 12 years and sometimes it is still greater.

Q. So after marriage it is most difficult to prevent consummation because the age of man is disproportionate to that of the girl?

A. That is probable.

Q. Unless there is marriage legislation, the Age of Consent will not be of any use?

A. No.

Q. As regards the investigation and reporting of these cases may the municipalities or union boards be given this power?

A. Yes.

Q. What is the constitution of these union boards—are the members elected?

A. Out of 9 members 6 are elected and 3 are nominated.

Q. If the power is given to the Union Board who will investigate the cases?

A. The President. There are panchayats, they can decide particular cases.

Q. How will the President investigate the cases?

A. He will authorise somebody to see to these cases.

Q. Union Board is a collection of several villages?

A. Yes.

Q. What about the dowry system in your class?

A. There is a dowry system among us.

Q. Does it work hardship?

A. The demand is not very strict in our community.

Q. Is widow re-marriage allowed?

A. Now it is being followed.

Q. The society does not object to it?

A. Good people do not object.

Mr. Kadri: In para. 3 you say that the crime of seduction and rape is not very infrequent in this part of the country. How many cases occurred?

A. I think about 300 or 400 cases occurred within the last 15 years.

Q. In paragraph 4 you say that the minimum age of marriage should be 16?

A. Yes.

Written Statement, dated the 3rd December 1928, of Dr. MOHINI MOHAN DAS, M.L.C., Dacca.

1. Yes.

2. (2) Advance on the present law should be made.

3. Not very frequent. The higher age limit has not affected crimes to any appreciable extent.

4. Not effective. Only by putting off marriage beyond 13 can one expect to make it effective.

5. 12 to 14 years. Yes, it differs.

6. (2—3) Are common. No, cases of this nature do not come to Court.

7. No, not on account of any religious scruples.

8. Yes, it is performed as soon after puberty as possible invariably after the expiry of 6 days and generally within 16 days.

9. No, 15th year is the fit age.

10. 16.

11. Yes, I have got some experience of such cases as a professional man.

12. Yes, it does.

13. Yes, confined only to certain classes.

14. Not amongst educated classes.

15. Yes. Difficulties are experienced. The system of the registration of birth should be improved.

16. Yes.

17. They ought to be different offences. 10 years for extra-marital, and marital not exceeding 6 months.

18. Yes. Marital offences should be tried in camera.

19. There should be a preliminary enquiry by a respectable and responsible gentleman of the locality and in no case by the police.

20. A minimum age of marriage should be fixed.

21. By both. Legislation first and propaganda and educating public opinion next.

Oral Evidence of Mr. M. M. DASS, M.L.C., Dacca.

(Dacca, 10th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you a medical practitioner in Dacca?

A. Yes.

Q. How long have you been practising?

A. 22 years.

Q. Can you tell us whether there are any communities in this part of the country where early marriages are practised?

A. Yes.

Q. In what communities?

A. Among Shankari, Shahas, Namashudras.

Q. Do you know anything about Muhammadans?

A. Yes.

Q. What is the practice?

A. In Dacca there is no early marriage among them.

Q. What is the usual age of marriage among Shankaris?

A. Usually the age is 10 or below.

Q. Among Mohamedans?

A. It is not less than 14 or 15 in Dacca.

Q. What about villages?

A. In villages even among Mohamedans early marriage is practised.

Q. What is the usual age of consummation among the lower classes?

A. 12 and 13.

Q. What is the age of consummation among the Mohamedans?

A. I cannot say about Mohamedans.

Q. What community do you belong to?

A. I am a Nama Shudra.

Q. Have you come across any evil results due to early consummation and early maternity?

A. Yes.

Q. Can you suggest any remedy for it?

A. I suggest that there should be a marriage legislation.

Q. What marriage age do you recommend?

A. 15 or 16.

Q. Do you think that will be acceptable to the people generally?

A. Yes, it will be acceptable to higher castes. As a matter of fact, it is already practised by them and others generally follow the higher castes.

Q. What age do you recommend for consummation?

A. The same age as for marriage.

Q. If 14 is fixed for marriage as recommended by Sarda's Bill, what age would you recommend for consummation?

A. I am not for making any differentiation between the age of marriage and the age of consummation.

Q. If the law fixed 14 for marriage, would you have 14 or 16 for consummation?

A. At least 15.

Dr. Beadon: What age do you recommend for extra-marital cases?

A. 18 years.

Q. Have you come across any cases of early consummation and early maternity in which there was any injury to the girl-mother?

A. I know of hundreds of cases.

Q. Can you give us one or two instances in which there was definite injury to the girl?

A. A Shaha girl was married at 11, she had a child at 13. The child was born after the 8th month but it died within 12 or 13 days. The mother had low fever for a long time which developed into tuberculosis and she died. This was last year. I know many similar cases.

Q. Was this a case in a well-to-do family?

A. Yes.

Q. Within your experience how many such cases occurred within the last two or three years?

A. 20 or 25.

Mrs. Nehru: Do pre-puberty consummations take place in your community?

A. Some cases do take place.

Q. Is it among the lower classes or higher classes?

A. Among the higher classes there are very few cases of early marriage and so such cases are non-existent among them and among other communities it is very rare.

Q. Does *Gārbhadhan* ceremony take place among all the classes?

A. Yes.

Q. You say that registration of births should be improved. Have you any suggestions to make?

A. No.

Q. You have said that in marital cases punishment should not exceed 6 months. Do you recommend that regardless of the age of the girl?

A. Considering the special circumstances that a girl's life will be spoiled I have recommended 6 months though in hard cases the punishment may be severe, but in such cases there should be a preliminary enquiry by responsible gentlemen of the locality.

Q. Will you make it a little more definite and say how the men should make a preliminary enquiry?

A. There should be a list of respectable gentlemen selected as jurors and they should be asked to investigate such cases.

Q. Would you like committees to be appointed by Government to do this sort of work?

A. Yes.

Q. Do women of this community in Dacca town go in for high education?

A. Yes.

Q. Are there any graduates?

A. There are school-going girls but not college-going girls.

Q. What is the age of those who go to school?

A. About 13 and up till then they are not married.

Q. Are there any meetings of women's associations here?

A. There is no women's association here.

Mr. Mitra: Are you a member of the Bengal Legislative Council?

A. Yes.

Q. You presided over the last All-India depressed classes association.

A. Yes.

Q. What is the number of depressed classes in Bengal?

A. About 17,500,000.

Q. What is the percentage of depressed classes of the Hindu population?

A. 87 per cent.

Q. Have you got your own daughter reading in school?

A. Yes.

Q. What is her age?

A. 14.

Q. What class does she read in?

A. 7th class.

Q. I understand you have got your daughter reading in the school here.

May I know what is her age, and in which class she is reading?

A. She is 14, and she is reading in the 7th standard.

Q. Do you think that educated people get their girls properly educated?

A. Yes.

Q. Do you think that those classes who practise early marriages practise them because they believe in the religious injunctions?

A. No.

Q. Do you think it is only custom?

A. Yes.

Q. Is it not a fact that they are also giving up early marriages and that there will not be very much opposition amongst them to this law?

A. Except some orthodox people nobody will oppose.

Q. What do you think would the opposition be like?

A. They will raise a hue and cry saying that religion is in danger.

Q. Is there a large number of orthodox people here?

A. No; not a large number.

Mr. Bhargava: You say that orthodox people will oppose the measure. Do you think that all orthodox people will oppose it?

A. The Brahmins, Vyyas and the Namashudras will oppose it.

Q. Is their number inconsiderable?

A. They may be large in number, but the opposition will not be much intensive.

Q. You have given us cases in which you have said there were evil results. Supposing a young boy and a young girl come together as husband and wife, but maternity does not come on, do you think that early consummation is by itself causative of great evils?

A. Yes; consummation by itself is injurious to health.

Q. Have you known of cases in which owing to early consummation girls have gone to early graves?

A. Yes; I know of cases.

Q. Is it a goodly number?

A. The whole nation is the result. Also we are deteriorating in health.

Q. What is the usual age of maternity here?

A. It usually is from 14 upwards, though there are some cases of 12 and 13 also.

Q. Do you find these evil effects in the villages also?

A. They are more common in the villages.

Q. Are consumption and hysteria found in the villages?

A. Hysteria is found more amongst the educated classes. Consumption also is more frequent in towns.

Q. What is the effect of early consummation in the villages?

A. The girls lose their health and vigour in life. There is more of child-deaths, and abortion and undeveloped children.

Mr. Shah Nawaz: Will this legislation regarding the age of marriage be acceptable to your community?

A. Our community is so very backward in education that unless there is some agitation started by some other people they will willingly obey the laws.

Q. Are they not influenced by Brahmin customs?

A. Yes; to a certain extent they are guided by Brahmins.

Q. Will the Brahmins bother them?

A. They will try, but the influence of the Brahmins is not so great in this part of the country.

Q. How many members are there of your community in the local Legislative Council?

A. There are 5 or 6 members.

Q. Are they of the same opinion as you are?

A. I know members of the last Legislative Council, who were with me, were agreeable to these views. But I cannot speaking about the members of the present Council because I have not consulted them.

Q. Have you consulted members of other communities?

A. Yes.

Q. What is their opinion on this matter?

A. The majority of them are not in favour of early maternity. The educated people say that they have practically given up early marriages and therefore the law is not essential so far as they are concerned.

Written Statement, of Dr. P. C. SEN, Health Officer, Dacca.

1. Yes.

2. An advance in the present law is suggested on the following lines:—

(i) Section 375, Clause 5, read 18 in place of 14.

(ii) Section 375, Exception 2, read 16 in place of 13.

Reasons for the suggested changes:—

Re (i) above—

(a) Risks of motherhood before 17 years may be eliminated.

(b) Marital duties will have less chance of interference with educational opportunities so essential for reducing parental ignorance, at present such a fruitful source of infantile and maternal mortality and morbidity.

The advance suggested errs, if at all, on the side of caution, and is easily capable of acceptance by society. The change will not appear to be cataclysmic, if the following figures are considered. In 1,434 consecutive charity cases of first confinement of mothers attended by the staff of the Dacca Maternity and Child Welfare Trust in this city from 1922 to 1927, the average age was 17·2 years. The percentage of mothers at the age of 14 or under comes to about 14·7. It is not clear what special hardship, religious, sentimental, traditional, would attach to this minority group of 15 per cent. if things could be so arranged as to enable this group to be merged in the majority (85 per cent.) group. Economic facts (the dowry system not excluded) as well as the growing bias in favour of independent existence are slowly but certainly forcing up the average age of marriage for both girls and boys. The proposed legislation is calculated to accelerate the rate of the upward trend of this process.

Re (ii) above—

The consequences of extra-marital intercourse to girls are serious and far-reaching, and the resulting offspring are exposed to relatively greater dangers than children born within lawful wedlock (as has been the experience in every country where Statistical enquiries have been conducted). Society has special moral obligations to step in for protecting girls under 18 years of age, just the period when mental and nervous instability may be present. A consent therefore should not be recognised as valid unless given by a girl who is not less than 18 years of age.

3. (1) No.

(2) It is rather early to judge of the results of the recent legislation, as far as the offence of rape is concerned. In the matter of offences relating to seduction, the results have been inappreciable. Briefly stated, the mentality which prompts the commission of offence of rape does not appear to have any special predilection for the tender age group. As a matter of fact, the victims are to be found in a wide range of age groups. Offences of seduction however seem to have a tendency to centre round the age 16 or 17, and for very obvious reasons. It is therefore suggested that not only the minimum age-limit in the second exception under section 375 should be raised to 18, but the minimum age-limit for offences under sections 361 and 362, 363 and 364 of the Indian Penal Code should also be raised for girls to 18 years as the only effective safeguard for a class of persons for whom the existing law does not afford sufficient protection.

4. The interval has been too short to secure appreciable results, in so far as this legislation is concerned.

6. (i) (2—3) More or less confined to the lowest classes of society. Cases come to court very seldom.

7—9. No.

(ii) The only answer possible is that each case has to be judged on its merits. The minimum safety limits for the average girl has been indicated in the replies to questions 2 and 3.

10. Eighteen years.

11. No.

Oral Evidence of Dr. P. C. SEN, Health Officer, Dacca.

(Dacca, 10th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Dr. Beadon: You have given the figures of the death rate of men and women between 1917 and 1927. From the statement it is found that the death rate of women in the years 1923 to 1927 is about 70 per cent. more than the death rate of men; whereas in 1917 the death rate of women is 10 per cent. less than the death rate of men. Do you think that the figures for 1917 are correct? We have been told in other places that in olden days the reporting of deaths was not so accurately done as it is done now. Do you think that this is due to a similar reason?

A. I would have it looked into and let you know.

Q. The figures show that between the ages of 10 and 15 the death rate of women is somewhat less than the death rate of men. In other places we have found that between the ages of 10 and 15 and 15 to 20 the death rate of women was greater than the death rate of men. Why is it then that in Dacca this rate is lower? Do you think that child marriages are less common in Dacca?

A. Child marriages are more common amongst the lower classes in Dacca, but not amongst the higher classes. But that cannot be the only explanation for this. I think the explanation is that registration of deaths is not quite accurate. We are trying to have accurate figures now. Statistics during the last 3 or 4 years are more or less approximate. Before that time there was a wide gap between real figures and the figures given. In the city of Dacca we have one peculiar difficulty. We have got 86 private burial grounds in this city, and the deaths of individuals who are buried in those grounds are not properly reported. The municipality maintains two public burial grounds for Muhammadans and there we have got our registrars who register the deaths. In the case of the private burial grounds the municipality does not know how many deaths have taken place. It is therefore left to the people to register these deaths.

Q. Would it not be possible to close these burial grounds?

A. I have reported the matter to the Municipal Commissioner and to the Government. I have been impressing upon them this matter as well as the insanitary character of the city. In 1920 the Municipality succeeded in closing 9 insanitary burial grounds.

Q. Is there any obligation on the parties to register births?

A. There is a legal obligation. But the difficulty is how to bring this responsibility home to the people by taking cases to the law courts.

Q. Is the registration of births satisfactory?

A. Yes; as a result of our efforts we have succeeded during the last 4 or 5 years to bring in 13 per cent. of unregistered births into the register.

Q. Do you have a system of compulsory vaccination here?

A. Yes.

Q. Do you check the births by the vaccination registers?

A. Yes.

Q. Do you register the additional births that have been found to be unregistered previously?

A. Yes.

Q. Is there any difficulty about the identification of children? In other places there is this difficulty because names are not given to the children. Is it so here also?

A. Yes; it is the same case here.

Q. When you go about for vaccination how do you identify that a certain child is the same child that you want?

A. We usually go about for vaccination after 6 months of the birth of the child. We do not always get people to submit to vaccination in time. As for identification, most of the children are traced by the vaccinators. The general practice is that as soon as a birth is registered, slips are issued to the registering authorities, and we preserve counterfoils. The vaccinator is responsible for disposing of all the counterfoils.

Q. Are these counterfoils kept permanently, or are they destroyed?

A. They are destroyed three or four years after they are disposed of by the vaccinator.

Q. Is the register from which these counterfoils are taken maintained permanently?

A. Yes.

Q. If you find at the time of vaccination that the birth of a child has not been entered in the registers, do you make the entry in the birth register?

A. Occasionally we do, but not always.

Q. Would you make any suggestion about improving the registration of births?

A. My suggestion is that the *Dais* who attend to maternity cases should be held equally responsible with the parents for reporting the birth to the proper authority. Secondly something in the nature of a nominal fee might be given to these *Dais* for each case reported. Thirdly, postcards should be supplied to these people to facilitate sending of these intimations. I think that will improve registration.

Q. We have been told that in Singapore birth registration is extremely reliable because birth certificates have to be produced when the children enter school. Would that be a feasible proposition here?

A. That was a point which I wanted to bring to the notice of the Director of Public Instruction. If that can be done matters would be much simplified, and there would be a real impetus if the rule can be enforced. I would further suggest that in making appointments they can require the production of birth certificates.

Q. Is it a fact that in the villages in Bengal female education is practically non-existent and male education is very poor?

A. Things are improving now.

Q. What about Dacca city?

A. We have got three girls' high schools. Two schools have about 500 girls each, and the third has about 100 girls. In addition to these we have 14 vernacular schools and all of them are overcrowded.

Q. Have you got primary schools here?

A. Yes; we have primary schools here. If we can get more accommodation we can get more pupils. As a matter of fact all the classes are now more or less overcrowded.

Q. Is that practically the same both with Hindus and Muhammadans?

A. Muhammadans are not much in evidence in these schools. There are two schools specially reserved for Muhammadan girls. Barring these schools, Muhammadan girls are not patronising the other schools.

Q. What is the age of marriage of girls in this part of the country?

A. In some of the higher class Kulin Brahmins there is no age-limit to the age of marriage of girls. Amongst them there are girls who have never married at all. The idea seems to be that the girl of a Kulin family should be married only amongst Kulins; otherwise they think that the whole family would become non-Kulins.

Q. Is that custom still prevalent?

A. Amongst Kulins it is prevalent to a great extent, so much so that there are amongst them unmarried girls about 30 years old.

Q. Amongst the Kulins, is it the practice for a man to have more than one wife?

A. Formerly that used to be one of the peculiarities of the Kulin caste, but that is a very rare phenomenon now.

Q. You say that in 1,434 consecutive cases of first confinement of mothers attended by the staff of the Dacca Maternity and Child Welfare Trust in this city from 1922 to 1927 the average age was 17·2 years. The percentage of mothers at the age of 14 or under comes to about 14·7. Can you give us any idea as to how the mothers fared. Is there anything about it on your record. Was there any particular trouble?

A. I can give you the records, but not just at present. Possibly you might be more interested in the after effects of these confinements. I might tell you that Bengalee labours are comparatively easy, and the general consensus of opinion is that the labour is not specially difficult.

Q. What about the after effects?

A. That is a point which I am myself enquiring about, and I have not finished my enquiries.

Q. From your enquiry so far, what is the impression you have formed about the after effects on these young mothers compared with the after effects on older mothers?

A. My impression is that the lower you go down below 20 the worse the result, and the nearer you approach 20 the safer the results. 20 I would put as the central point.

Q. What do you think is the reason for Bengalee labour being easy?

A. I cannot hazard any definite opinion. But I believe that there is something racial in it. The tissues of the private parts are evidently not stiff. Secondly, the head measurement of the children is not so big.

Q. Do you find tuberculosis common in Dacca?

A. I cannot say that it is very common. I have been keeping a particular eye on this. I have been told to look for more cases of tuberculosis amongst females. But the more I have been trying to scrutinise the more do I find that I cannot support the view that it is more common among females. As a matter of fact I found that in my first year we had 56 cases; in the second year 72 cases; in the third year 80 and odd and in the year following 100 and odd. Usually many of the cases are put down as fevers. Early last year we started verification of the causes of these deaths. The only possible thing to do under the circumstances is to send Assistant Surgeons to houses where deaths occur to make enquiries about the disease, the nature of the treatment and other particulars including the diagnosis of the physician and the general impression of the household. I have been doing that for the last two years.

Q. You say that the consequences of extra-marital intercourse to girls are serious and far-reaching, and the resulting offspring are exposed to relatively greater dangers than children born within lawful wedlock. Is there a great deal of extra-marital intercourse here?

A. There is a peculiar practice in these parts, namely, that ladies go to the rivers for water supply. This practice exposes them to evil-minded persons. Possibly that might be one of the reasons for these cases.

Q. You are referring the dangers to children in these cases. Are you referring to the danger of venereal infection, or do you mean that the children suffer owing to want of proper guardians?

A. Yes; most of the people who seduce the girls are infected. Also the mother cannot be expected to take care of the children and bring them up.

Q. What is the usual age of puberty here?

A. It is nearer 14.

Q. You suggest 16 for the Age of Consent in marital cases. Do you think that if girls attain puberty at 14, it would be possible to keep them apart from their husbands till 16?

A. Firstly, I find that the age of marriage is going up irrespective of any legislation. Secondly, boys in our country are showing a tendency to postpone marriage until they are able to earn. That tendency is daily being accentuated. If we can only manage to keep these girls occupied by some means there may not be difficulty in raising the age. The fashion has been set for boys to ask for educated girls. These ideas automatically raise the age of marriage.

Mrs. Nehru: Can you tell me whether the private burial grounds you were referring to are in the private compounds of people?

A. These grounds practically stand by themselves. You might come across some of these grounds forming part of private compounds, but a little detached.

Q. In the maternity hospitals run by the municipality have you noticed the ages of the mothers who come there for confinement?

A. We do not have any maternity hospital here. I simply said that records are kept in which we note down the ages of the people who were confined, and other particulars. The staff of the Dacca Maternity and Child Welfare Trust dealt with 1,100 to 1,200 cases. They usually go about to the homes of poor people and record the cases.

Q. What was the lowest age of the girl-mother?

A. 11. We have not got any other details about these cases because we only send our midwives to the houses.

Mr. Thakur Das: What is the lowest age amongst the prostitute girls in Dacca city?

A. I have seen prostitutes as young as 13 years.

Q. Do they generally begin at this age?

A. Most of the women are much older. The case at 13 struck me because it was an unusual thing to see.

Q. When you say that the age in extra-marital cases should be raised to 18, do you realise that there are cases like these?

A. Exactly, yes. As Health Officer it has struck me. I think that if we raise the age to 16 in extra-marital cases the minimum age of the boys would automatically go up. No doubt there are evils, there are difficulties and there are hardships resulting to the girl-mothers. But if the age goes up a certain percentage of young people who are not married early and who are not stabilised might go wrong, and they might probably bring infection to their unfortunate wives later on. We have, therefore, to consider whether the evil that might result might not to some extent counterbalance the good that we might have by raising the age. The second point is that human nature being as it is, there would be temptation to abortion or infanticide in some form to escape the penalties prescribed. The third point is that contraceptive methods have to some extent come to be familiar. From the moral standpoint we do not know to what extent this might vitiate the good which we might derive. But taking all these things into consideration I am still of opinion that the advantages in raising the age would be greater.

Q. If a girl becomes a mother at 16, do you think that it is injurious to her progeny and herself?

A. As I have said, every case has got to be judged on its own merits. We cannot generalise on these matters. But if we ought to lay down a general rule which will include cases of hardships, I think, 16 would be a safe minimum limit.

Q. Do you think it will not be wise to legislate in respect of marriage?

A. I think that public opinion might endorse that view. That is what I apprehend.

Q. But do you not realise that once marriage is allowed it will be difficult to prevent consummation?

A. I realise that difficulty, and therefore I have suggested one method, namely, that girls should be given facilities for education up to 16.

Q. If we are going to have marriage legislation, what age would you have?

A. I would have 16. As you say it might be difficult to prevent consummation once marriage is allowed, I think, we can have the age of marriage also at 16. But I do not personally think that you can legislate that way, because public opinion would not favour it.

Q. When you say that generally speaking 16 would be the safe age for motherhood then naturally you can have the age of marriage at 15 as maternity would not come about till 16.

A. I would not go so far. I would not have a mother at 16 if I can help it. It must not be less than 17.

Q. What is the marriageable age of girls in Dacca?

A. Amongst the Shaha or Banking community it is 10 and 11. Amongst the Kayasthas and Brahmins it is something between 15 and 16.

Q. What is the marriageable age amongst Muhammadans?

A. Amongst them it is generally somewhat earlier. But there are two classes amongst them. The higher classes have marriages later, and the lower classes earlier.

Q. Amongst what class of people is marriage earlier?

A. There is a class of people called Shankaries amongst whom the marriage takes place even at 3 and 4, and the boys are sometimes about 8 years old. They are about two thousand in number. They are a very peculiar people. Their standard of morals and sanitation might justify some remarks of outsiders about our customs. Other classes of Hindus amongst whom marriages are earlier are washerman, carpenters and other artisans.

Q. You say that the percentage of mothers of 14 or under was about 14.7. Amongst what classes is this common?

A. Amongst the poorer sections of the community and the lower middle classes. I give that to illustrate that when it is the case only with about 15 per cent. of the people there is no reason why they should not be forced to go with the majority.

Q. In your opinion which is a greater evil, early consummation or early maternity?

A. I should say maternity.

Q. Do you not think that early consummation is an evil of great magnitude. By early consummation does not the whole system become a wreck?

A. It certainly means a strain on the body. I might mention in this connection that amongst educated students contraceptive methods have come to be introduced just to avoid maternity. It is not maternity they object to, but they want to avoid children, and the responsibility attaching to them.

Q. Even if contraceptives are used, do you think that the evil will be there unless the age is raised?

A. Yes.

Mr. Shah Nawaz: Is it your idea that we should not fix the minimum age of marriage?

A. Yes.

Q. At the same time you say that the Age of Consent in marital cases should be fixed at 16. How are you then going to make the law effective?

A. I am not so very pessimistic. I do not think that it can be achieved simply by legislation, but there are already other factors at work, factors more powerful than legislation. These forces are raising the age of marriage automatically. Legislation will make public opinion fall into line within a measurable distance of time.

Q. Do you think that if a boy is 18 and the girl 15 the marriage will not be consummated?

A. I do not think that they should be thrown together. By this legislation you would be discouraging early marriages, but if you try to legislate for marriage, then there would be an outcry against it. But if you do it indirectly by fixing the age of consummation then it would be more or less an indirect discouragement for the celebration of early marriages.

Q. Supposing early marriages cannot be discouraged that way, what would be the age you would fix for marriage?

A. One of the reasons why I do not recommend any age of marriage is this; one of the recent inspirers of the Brahmo Samaj in Bengal, Mr. Keshab Chander Sen, with other members of the community, prescribed 16 as the age of marriage for girls. But owing to extraneous considerations he gave his daughter in marriage before that age. I therefore think that if a father finds that his daughter should be given in marriage at 14 for various reasons, then it would be very difficult to prevent that. Therefore having regard to the social conditions I would not recommend the fixing of the minimum age of marriage.

Q. How are you going to prevent consummation below 16, if girls are going to be married at all ages?

A. I might say that the usual practice here in Bengal is for the girls to wait for nearly a year after puberty. If the girls are sufficiently grown-up the interval will be shorter. But I think that a convention will be set up as a result of this legislation and girls will be retained in their parents' houses till a sufficiently late period.

Q. But supposing the girl attains puberty at the age of 12 consummation may take place at 14.

A. But I expect the age of marriage itself would automatically go up.

Q. The age of puberty is now about 12 and 13. How are you then going to leave it to the society and the people?

A. We ought to take the society along with us in all these matters.

Q. Do you think that girls will go wrong if they are kept unmarried till an advanced age, say, 15?

A. I do not think so.

Q. What about the boys?

A. I think boys should be compelled to take to physical exercise in all educational institutions, and they should also be given wholesome amusement. The second point is that all employers should insist upon physical exercise as a test for employment. I think by these means you can get good results.

Q. Are you opposed to legislation for marriage because you think that people will oppose it?

A. Yes; there will be strong opposition. If you have legislation the general community will not sympathise with it.

Q. Why is it that cases under the Age of Consent Law have not come to court so far?

A. These cases will never come to court unless the injuries are so serious as to require attention in hospitals or by private medical practitioners. Otherwise these cases will not come to light. I think legislation in this respect will have an educative effect on the people and the moral standard will be raised.

Mr. Kadri: Apart from the question of opposition would you be personally in favour of a minimum age being fixed for marriage?

A. Yes; personally I would recommend 16.

Q. Amongst the communities amongst whom early marriages prevail, is the infantile and maternal mortality very high?

A. Unfortunately it so happens that in the communities in which these early marriages prevail there are other factors which bring about a high infantile mortality. Therefore it cannot be said that infantile mortality is high because of early marriages alone. But it is a fact that immature parents will give birth to immature children.

Q. I understand your daughter is reading in the school here. May I know what is her age, and in which class she is reading?

A. She is 14, and she is reading in the 7th standard.

Q. Do you think that educated people get their girls properly educated?

A. Yes.

Q. Do you think that those classes who practise early marriages practise them because they believe in the religious injunctions?

A. No.

Q. Do you think it is only custom?

A. Yes.

Q. Is it not a fact that they are also giving up early marriages and that there will not be very much opposition amongst them to this law?

A. Except some orthodox people nobody will oppose.

Q. What do you think would the opposition be like?

A. They will raise a hue and cry saying that religion is in danger.

Q. Is there a large number of orthodox people here?

A. No; not a large number.

Mr. Thakur Das: You say that orthodox people will oppose the measure. Do you think that all orthodox people will oppose it?

A. The Brahmins, Vaisyhas and the Namasudras will oppose it.

Q. Is their number inconsiderable?

A. They may be large in number, but the opposition will not be much intensive.

Q. You have given us cases in which you have said there were evil results. Supposing a young boy and a young girl come together as husband and wife, but maternity does not come on, do you think that early consummation, by itself would cause much evil?

A. Yes; consummation by itself is injurious to health.

Q. Have you known of cases in which owing to early consummation girls have gone to early graves?

A. Yes; I know of cases.

Q. Is it a goodly number?

A. The whole nation is the result. Also we are deteriorating in health.

Q. What is the usual age of maternity here?

A. It usually is from 14 upwards, though there are some cases of 12 and 13 also.

Q. Do you find these evil effects in the villages also?

A. They are more common in the villages.

Q. Are consumption and hysteria found in the villages?

A. Hysteria is found more amongst the educated classes. Consumption also is more frequent in towns.

Q. What is the effect of early consummation in the villages?

A. The girls lose their health and vigour in life. There is more of child deaths, and abortion and undeveloped children.

Mr. Shah Nawaz: Will this legislation regarding the age of marriage be acceptable to your community?

A. Our community is so very backward in education that unless there is some agitation started by some other people they will willingly obey the laws.

Q. Are they not influenced by Brahmin customs?

A. Yes; to a certain extent they are guided by Brahmins.

Q. Will the Brahmins bother them?

A. They will try, but the influence of the Brahmins is not so great in this part of the country.

Q. How many members are there of your community in the local Legislative Council?

A. There are 5 or 6 members.

Q. Are they of the same opinion as you are?

A. I know members of the last Legislative Council who were with me were agreeable to these views. But I cannot speak about the members of the present Council because I have not consulted them.

Q. Have you consulted members of other communities?

A. Yes.

Q. What is their opinion on this matter?

A. The majority of them are not in favour of early maternity. The educated people say that they have practically given up early marriages and therefore the law is not essential so far as they are concerned.

Mr. Kadri: Do you think infant and maternal mortality is higher among the communities among whom early consummation prevails?

A. Unfortunately it so happens that the communities in which early marriages exist there are other factors at work which bring about a higher infant mortality. Therefore it would not be fair to attribute this infant mortality to early marriage alone. Of course, immature parents are certainly expected to bring forth immature children.

Q. In your birth register have you got a column mentioning the name of the child?

A. No.

Mr. Kanhaiya Lal: In the first place am I correct in thinking that the number of females in Dacca city is less than the number of males?

A. Yes.

Q. The percentage of mortality among females as compared with males will have to be considered with due regard to total number of females in Dacca city of the same age. Have you had time to find out the mortality of females and males between 10 and 15 and 15 and 20?

A. I will prepare this statement and send it to you.

Q. The other thing is whether medical men and women will be willing to report confidentially cases of breach to the proper authority for suitable action?

A. If medical men are expected to do it they will do it but ordinarily they would not do it unless there is some penalty for non-reporting or there is a legal obligation on them to report.

Q. It has been represented to us that the result of placing such legal obligation on men and women will be that fewer girls will be brought to them for treatment and harm may be done instead of good. What is your opinion?

A. That is so because cases of consummation will not be brought to their notice.

Q. If medical men and women report confidentially the apprehension that some patients may not be brought to hospital for treatment may not be really serious?

A. People will always have a lurking fear in their heart and we will be considered to have been supplying this information.

Q. At present these cases are not brought to light and if in case of injury a confidential report is made, there may be some more cases brought

to light. Do you think the advantages of legal obligation would be greater than disadvantages?

A. I think it is well worth a trial.

Q. You suggest that for the purpose of Government appointments Government should declare that no married man should be qualified. You mean to suggest that married men may be debarred from Government service?

A. What I suggested was that Government should have a certain amount of bias in favour of physical exercise for people applying for Government appointments and this bias in favour of physical exercise might check the tendency of early marriage.

Q. Would you recommend a rule declaring that any boy who is married after a certain time should not be allowed to go up for the high school or matriculation examination held thereafter? Do you think that will have a salutary effect?

A. The number of married boys reading in the matriculation is so small that no legislation is called for in that direction. Moreover public opinion and economic factors are working so strongly in that direction that possibly the number might be considered as negligible.

Q. But still you say that among certain classes of the population in Dacca child marriage is still practised.

A. Yes, it is 8 to 10 years, but they have not been sending up their boys to school yet.

Q. Among the classes that send boys to schools is the percentage negligible?

A. Yes.

Q. Do you think that compulsory education will tend to raise the marriageable age also?

A. Yes.

Mr. Mitra: To what District you belong?

A. Khulna.

Q. How long have you been here?

A. 7 years.

Q. Really you belong to Khulna but you were born and brought up here?

A. Yes.

Q. You are not against marriage legislation or social legislation on principle but from experience you say that legislation will not be advisable. Is it so?

A. Exactly.

Q. And the main reason in your opinion is that there will be opposition?

A. Exactly.

Q. From what class you expect opposition?

A. All classes, except those who are educationally very much advanced, will oppose it.

Q. Is it a fact that some educated classes will also join the protest?

A. Yes, and other classes who may not be vocal but still they will show resentment in some form or another if marriage legislation were introduced.

Q. What form will that resentment take?

A. I cannot anticipate what form it will take but it will show itself in some tangible form.

Q. In what percentage of population early marriages are practised in Dacca?

A. I have not considered that.

Q. You would very much desire that early marriages should stop?

A. Yes.

Q. And at the same time you expect that public propaganda alone will do it?

A. Yes.

Q. Don't you feel that propaganda also generally affects the literate classes. It is very difficult even to educate the illiterate masses?

A. I think all these people will follow the educated classes in course of time. Lower classes generally copy the upper classes. The way in which ladies in the upper classes used to be dressed are now being copied by the lower classes. What is accepted as fashion in the upper classes to-day will be the fashion in the lower classes 10 years hence.

Q. Do you think it is due to religious ideas that there are early marriages among the masses or is it due to custom?

A. It is in a sense social pressure.

Q. Is there any social pressure when people are compelled by circumstances to marry their girls late?

A. In some cases pressure is put upon the people who delay the marriage of their girls in the lower classes.

Q. If there is legislation they will be all on one level. Many people say it is tolerated because there is no ex-communication.

A. There is no ex-communication but they do not go to the limit of ex-communication because the father of the girl is made to submit.

Q. Is it an idea among the people that marriages should be performed before puberty?

A. In the lower classes there is some such notion that marriage should take place before puberty.

Q. And when they transgress that social law, do you feel that though there is no ex-communication there is some sort of pressure?

A. Yes.

Q. Don't the people in practice now find it very difficult to get their girls married early?

A. Yes, and I may incidentally mention that dowry system which is an evil in itself is helping in forcing up the marriageable age.

Q. Will it not be that people will really bless this law because they will find an excuse to go against their custom?

A. I do not. There are so many considerations involved; it is very difficult to say whether people will bless it or not.

Written Statements of persons not orally examined.

Written Statement, dated the 11th August 1928, of Moulvi NUR AHAMED, M.A., B.L., Chairman of the Municipal Commissioners, Chittagong.

1—2. The existing law as embodied in sections 375 and 376, Indian Penal Code, is not sufficient. The Age of Consent should be raised to 15 or 16 years of age. I suggest 15 to 16 years as in these years generally the girls in our part of the country acquire sufficient power of judgment. The existing law is not sufficiently protective. If the Age of Consent is raised to 16 years it will go a great way to prevent occurrence of rape cases and if the police are vigilant and dutiful, the number of rape cases are bound to be decreased.

3. I am of opinion that it has proved quite abortive and ineffective. It has not succeeded in either preventing or reducing the cases of rape outside the marital state, or the improper seduction of girls. I suggest the following measures:—

- (1) Publication of these two sections of Penal Code to the masses through the Presidents of the Union Boards and Circle Officers.
- (2) Creation of strong public opinion (mass opinion) by vigorous propaganda through the Union Boards and through humanitarian and social organisations.
- (3) Issue and broad cast distribution of literature containing religious injunction on this matter among the masses.
- (4) Prompt and vigorous measures by the local police whenever any rape case occurs in its jurisdiction.
- (5) Ex-communication by society the authors of this sort of crime.
- (6) Establishment of girls protection league throughout the country consisting of the members of all the communities; the majority community preponderating in such an organisation.

4. As far as my personal knowledge goes it has not produced any of the effects as enumerated in (1), (2) and (3) in our part of the city. It has not been of any use here because the masses being very ignorant very few people keep any information about the change in the law. In my opinion the following steps may be resorted to, to make it effective:—

- (1) General information to the masses.
- (2) Creation of social opinion, against any marriage before 14 years of age through local social organisation and religious preachers such as Moulvies and Brahmans.
- (3) Distribution of small pamphlets in easy vernacular to the masses showing ill effects of early marriage.

5. In Chittagong the girls generally attain puberty between 12 to 16 years of age, according to growth, social atmosphere, environment, and other concomitant circumstances. There is no difference among Hindu and Moslem girls but the Christian girls attain puberty at higher stage, say, between 15 and 16 years of age.

6. Cohabitation before puberty is not common in our part of the country. It is a rarity. It is pretty common soon after puberty especially in cases of

married girls. It may be before 13 years of age in case she attains puberty before that age. The old practice of keeping such married couples separate from each other has practically disappeared.

In very exceptional and extreme cases it comes to court.

7. I do not consider that early marriage is due to any religious injunction. It is brought about by the hobby of the parents or other near relatives. Strictly speaking there is no religious injunction which compels the parents to contract marriage for their children at an early age. It is nothing but custom and obnoxious practice and superstition which are the causes of the early marriage.

8. This ceremony is invariably performed after marriage when the girl menstruates for the first time after marriage.

This ceremony is generally performed after the attainment of puberty.

9. No. Promiscuous meetings of men and women hasten the puberty of girls, even though the physical development is not perfect. Those girls who are married at an early age attain puberty earlier. This is precocity and not full fledged maturity. 16 is the proper time to make the development perfect in our part of the country.

10. In my opinion the girls cannot understand the consequences and cannot give intelligent consent before 16 to 18 years of age.

11. During my experience professional and otherwise I have come across numerous cases in which cohabitation before puberty or after puberty but before full physical development of a girl ruined her health for ever and led her to grave or prejudicially effected her progeny.

A girl of 13 years was married and became pregnant within a year. At the time of delivery she died and before that she suffered about 6 months from various diseases such as indigestion, etc. Instances within my knowledge are numerous to cite here.

12. Yes. I think so from my personal experiences. In our Municipality about 50 per cent. women die at child-birth and many give birth to still-born children or children who die immediately after they are born.

13. No. There is no further agitation in this part of our country.

14. No, generally in very exceptional cases.

15. Invariably some difficulties are always felt. The best means is to ensure accuracy and necessary details for future identification of the girls at the time of registering her birth in the Municipal office and in the Police thana and to enforce the law for compelling the parents to get the name of their girls registered when they are born.

16. I do not think so.

17. I am against it because in my opinion it will prove abortive and of no effect to the society is not strong enough to act upon it.

18. No.

19. I suggest the following:—

- (1) Creation of strong public opinion and social prejudice against the offence and offender by vigorous propaganda by local associations and through Government Agency.
- (2) Formation of woman protection league consisting of members of all communities in every village.
- (3) Formation of vigilance committee of local men.

20. No. The fixation of the minimum of age of marriage will more suit the public opinion here.

21. I will prefer to rely more on the progress of social reform by means of education and social propaganda than the strengthening of the penal law because the former is more calculated to create an atmosphere more healthy and beneficial to the attainment of object in view and the law remains a dead letter unless the people are educated and are prone to obey the same.

Written Statement, dated the 7th August 1928, of Babu REBATI RAMAN DUTT, M.A., Deputy Magistrate and Deputy Collector, Ramgarh, Chittagong Hill Tracts, Bengal.

1—2. There is considerable dissatisfaction amongst the people in Bengal with the present state of law in sections 363, 375 and 376 of the Indian Penal Code. Instances of prosecutions against a husband for sexual intercourse with his wife under 13 years or 14 years are very rare. Under the Hindu Law, the husband is the lawful guardian of the woman and if he abuses his own trust, the woman's parents are not going to send him to jail or antagonise him. The police also need not disturb such relation, because according to Hindu religious belief marriage is indissoluble. Section 376A is however useful and inasmuch as a girl's health suffers by sexual intercourse before she has attained the age of 15 or 16, the limit should be 15 "in place of 14" in section 376A.

But the greatest dissatisfaction arises from the instances of Mahomedans taking away Hindu women, very often widows above 16 years of age and section 363, Indian Penal Code, is inoperative in such cases. There are difficulties in applying section 375, Indian Penal Code, because the woman's consent is obtained not by so much as putting her in fear of death or hurt but by keeping her in wrongful confinement and putting her in fear of loss of caste, religion and honour. People can put up with death of women rather than suffer their being carried away by Mahomedans. Such cases inflame popular feeling and bring in much communal bitterness. Amongst Hindus an abducted woman will never find an honourable place in the family but amongst Mahomedans abducted women are readily taken in the family with a little ceremony of conversion and marriage. It is imperative that laws must prevent such communal upheaval and an advance on the present law to meet such cases is absolutely necessary and justified.

3. I would suggest the following measures to make the law effective.

Section 361A.—Whoever takes or entices a woman out of the keeping of her lawful guardian or out of the family where she was lawfully abiding or out of the pale of her religion by birth is said to kidnap such woman.

Section 361B.—Whoever converts any woman with the intent that she may or knowing it to be likely that she may marry a person, with whom no marriage could take place under the customs of her own religion shall be punished with imprisonment for a term which may extend to three years and shall also be liable fine.

Section 375.—*Thirdly.*—With her consent when her consent has been obtained by putting her in fear of death or of hurt or of wrongful confinement or of loss of her caste and religion.

Sixthly.—With or without her consent when she belongs by birth to a different religion.

4. The amendment of 1925 has proved very little effective. The law is not known very much. But due to economic reasons young men are sometimes inclined to put off marriage till 25 or 30 and the marriage of girls is also getting up. In order to make it effective I would make it penal to marry a girl below 13 and the sentence should be simple imprisonment up to six months or fine of Rs. 200. I would also suggest here that I would make it penal to marry a girl below 16 with a man above 50 years of age and the sentence should be as stated above.

5 and 9. Girls generally attain puberty in Bengal at the age of 13 and puberty is no sufficient indication to justify consummation of marriage. It may be stated that on the completion of 15 years of age a girl's physical development may be considered sufficient for consummation.

12. I do believe that early consummation and early maternity are responsible for high maternal and infantile mortality amongst the people.

Written Statement, dated the 8th August 1928, of Khan Bahadur Moulvi MUHAMMAD ISMAIL, M.L.C., Public Prosecutor, and Chairman, District Board, Mymensingh.

1. No dissatisfaction.

2. (1) The Age of Consent should be 14 years. No further advance seems necessary. For the girls in this country generally attain puberty at the age of 12 or 13 years though they are not sufficiently developed in mind and physique at that age. According to Mahomedan Law a girl is competent to contract marriage when she attains puberty and this presupposes her competency to give consent. The proposed change would deprive her of that right and would curtail the privilege given by the Mahomedan Law. But having regard to the fact that by consummation of marriage at that early age they are wrecked in health, and give birth to sickly progeny.

(2) Does not arise.

3. Crimes of seduction and rape are frequent in this part of the country. The change in law in this respect made in 1925 has not succeeded nor reduced the cases of rape outside the marital state or improper seduction of girls for immoral purposes.

I do not think any change in the law would make the law effective. No legal measure will be able to eradicate these evils unless educational advancement is made among the lower classes and public opinion is formed against these evils.

4. (1) No case has come to my notice.

(2) Perhaps not.

(3) Marriages are generally deferred not on account of age but owing to other reasons. I would propose public propaganda for explaining the evils of consummation of marriage before the age of 14.

5. The girls attain puberty usually at the age of 12 or 13 in our part of the country. It does not differ in different castes, communities or classes of society.

6. (1) No.

(2) Yes.

(3) Not common.

7. None to my knowledge.

8. It is not due to religious injunction.

9. I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I am strongly of opinion that consummation of marriage would be safe if it is done after she has completed the 16th year.

10. At the age of 16 years.

11. I can cite any number of cases that have come to my notice that the girls have broken their health by cohabitation before or immediately after attaining puberty.

12. Early consummation of marriage and early maternity are mainly responsible for high maternal and infantile mortality and consequent intellectual and physical deterioration of people—though want of proper nourishment is another cause.

13. No.

14. Yes.

15. Difficulties are often experienced in cases coming before the courts in which the age of the girl raped or enticed—is essentially material. The medical evidence to which considerable importance is attached by courts is not in my opinion accurate and conclusive. Oral evidence on this point cannot be relied on. Better arrangement for record of birth and maintenance of birth register will to a great extent remove these difficulties.

16. I do not think that the difficulty or margin of error in determining the age would be materially reduced or minimised if the Age of Consent is raised to 14 years. But it may, if the age is raised to 16 years.

17. I would suggest separation of extra-marital and marital offences into different offences. Punishment for extra-marital offences now provided for should be maintained. Punishment for marital offences should be nominal.

18. The procedure of trial for offences without marital state should be as it is now, but procedure for trying offences within marital state should be non-cognizable, bailable, non-compoundable and triable only by the Magistrate of first class and should not be made a Sessions triable offence.

19. No.

20. I do not think so. None of the two alternatives would be in consonance with public opinion in our part of the country.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda to secure the object in view.

Written Statement, dated the 5th August 1928, of Khan Bahadur K. A. SIDDIKY, Zemindar, Beoharam's Gate, Dacca.

1. There is no dissatisfaction so far as the Age of Consent of non-marital sexual intercourse is concerned and public opinion is rather in favour of raising the age. But as regards sexual intercourse by a man with his wife, the country at large, is hardly aware that there is any restriction. If the people had known of law, they would have vehemently opposed the raising of the Age of Consent in case of a married wife to even 13. Many a people will probably hear now for the first time with surprise not unmixed with horror that a husband is restricted by law from having intercourse with his wife even after her attaining puberty, if the wife's age be less than 13.

2. In a large majority of cases, rape and seduction are due to girls being left unmarried even after puberty. Seduction and rape occur generally among common class people whose children being in constant touch with lower animals which they rear and tend, get the sexual instinct developed at a comparatively early age, and being without education they can hardly check it when they attain puberty. In my opinion if cases of actual rape and seduction are to be reduced law should allow guardians of girls to secure necessary protection for their wards by giving them in marriage sufficiently early. Law as it now exists does not prevent early marriage but it prevents consummation of marriage before 13, and the husband being prevented by law from cohabiting his wife, the wife falls prey to seduction from intriguing people of the neighbourhood. For marital intercourse, therefore the Age of Consent instead of being increased should I think, in the interest of the safety of womanhood, be reduced if possible to 11, at which age the girls generally attain puberty in this country. I admit, however, that a girl is not in a position to understand the consequences of sexual intercourse at least before the age of 18 and so I think the Age of Consent for non-marital sexual intercourse should be raised to at least 17 if not 18.

I would thus suggest an advance on the present law so far as it concerns non-marital sexual intercourse but as regards marital intercourse for giving the girls every chance of not falling a prey to seduction I would strongly urge the reduction of the Age of Consent to 11.

3. The crimes are very frequent in Mymensingh and Backergunge Districts which adjoin my district. The amendment of the law made in 1925 has not in the least prevented or reduced cases of rape outside the marital state or the improper seduction of girl for immoral purposes. The people who commit such crimes scarcely care to think of the exact age of the girl of which no correct record is kept by anybody. In fact cases of rape when committed with the consent of the girl scarcely come up to court even if the

girl's age be less than 12. It is very difficult to determine whether the girl who gave her consent was 12 or 15 as growth in different girls differs very greatly. In order to give proper protection to unmarried girls, therefore, the age should be raised sufficiently high so that the miscreants may not escape if the girl afterwards turns out to be 15 or 16 according to medical evidence. I have, therefore, suggested 17 or 18 as the age in case of non-marital intercourse. This will prevent miscreants carrying on intrigues with girls of tender age like 12, 13 or 14.

4. For reasons already given in paras. 2 and 3 above I am strongly in favour of reducing the age to 11 in marital cases. By raising the age to 13, married girls have been refused the protection which they could otherwise enjoy if they had been with their husband since the time of puberty at 11 or 12.

5. Girls of the well-to-do class generally attain puberty at about 10 or 11. Girls of common class people attain puberty about one year or so later.

6. (1) Cohabitation is not uncommon in lower class before puberty.

(2) Cohabitation soon after puberty is considered essential by all, including the advanced section, except only a few Europeanized Indians.

(3) The restriction of 13 years is purely artificial and neither society nor individuals, in spite of the law of 1925, care for the number of years. The advanced section generally take puberty as the standard of development of girls after which delay in the consummation of marriage is considered unnecessary and inadvisable.

Technical rapes with consent very seldom come to the notice of Courts. It is only when there is some motive behind, that such cases may be brought to the notice of the executive with a view to wreaking vengeance.

7. Consummation of marriage soon after puberty is clearly attributable to religious injunction of both Hindus and Mohammadans. Mohammadan religion makes it desirable whereas Hindu religion makes it compulsory for the authority so far as Mohammadan religion is concerned the Fatwa annexed with these replies (Appendix A) may be referred to. The Fatwa has been signed by most of the learned Arabic scholars including 2 Shamsul Ulamas, of Bengal herewith, may be referred to.

8. This is a Hindu ceremony and I do not like to say anything in connection with it.

9. I do consider attainment of puberty as the natural indication of physical maturity to justify consummation of marriage. To overlook the nature's signal and to delay or hasten consummation by fixing an artificial age-limit will result in disastrous effects. In the common class people the dangerous effect of such legislation will be that the girls in their early age not being under control of husbands will be more open to seduction and the crime of seduction and rape will increase.

10. In the present state of illiteracy in this country 90 per cent. of the female population of India can never be expected to be able to give an intelligent consent to cohabitation with a due realisation of consequences. The girl will have to depend entirely on their guardians for choice of their partners for many more generations to come, and so the question of the age of giving intelligent consent in case of girls who have guardians does not arise. I doubt even if highly accomplished European girls can give intelligent consent before 25.

11. I have personal knowledge of 4 or 5 cases in which girls of 10 and 11 had intercourse with husband and gave birth to children at 11 and 12 and the children and the mothers are living and are still in excellent health. I am, however, aware doctors whenever they find weak babies born of girl-mothers of tender age, it is the fashion with them to attribute the weakness of the child to early marriage. But if census were taken of all weak babies it will probably be found that weak babies are not less frequently given birth to by elderly parents.

12. I do not at all believe that early consummation and early maternity are responsible for high maternal and infantile mortality. The census figures of 1911 gives lie to the theory that high maternal and infantile mortality is due to early consummation of marriage. In this connection I would refer to the pamphlet (Appendix B). The high mortality is really due to malnutrition on account of economic causes. That early marriage and consummation do not at all affect the intellectual or physical progress of the people is fully borne out by the fact that the Hindus among whom early marriage and early consummation are more common are not intellectually less advanced than the Mohammadians.

13. Public opinion is vehemently opposed to raising of the Age of Consent in marital cases. In non-marital cases public opinion rather supports further raising of age to 18 or 21. Hindu girl-widows badly require protection and at least for their safety if not for anything else the Age of Consent should be raised to 18 or 21 in non-marital cases.

14. As already stated, people of this country whether men or women, generally think attainment of puberty as the indication of proper time for consummation. Hindus consider it sinful to delay consummation after puberty and the Mohammedans also consider it undesirable.

15. It is very difficult for doctors to give definite opinion as to whether a girl is of 13 or 15 in connection with cases under sections 375 and 376.

I have suggested the Age of Consent in non-marital cases to be raised to 18 or 21 as the girls below 15 in that case will at any rate be protected even giving margin for errors in medical opinion. As regards Age of Consent in marital cases, Government should leave it to social reformers and should not complicate matters by bringing it within the purview of the Penal Code. Even the restriction of 13 years imposed by law has so far remained a dead letter and a very few of the common people know about it. That being so, by further raising the age, Legislature will hardly improve matters, on the contrary the husbands not being allowed to exercise their legitimate right over their wives, the girl-wives of common people will be more prone to seduction. Besides that the connection between husband and wife is a delicate matter and should not find exposed in Law Courts except in very exceptional cases.

16. I have already suggested the raising of age in non-marital cases to 18 or 21 and if this suggestion is accepted it will certainly minimise the margin of errors in determining the age. For reasons already stated I am against age in marital cases.

17—18. I am deadly against marital cases being taken to Court, at all.

19. So far as offences within marital tie is concerned it is time that the Legislature knew that legislation so far instead of actually reforming the husbands has only opened the door of improper prosecution and extortion. The door of improper prosecution will be opened still wider if the age is raised. It should be left to social reformers to deal with offences within marital state.

20. I am strongly against raising the Age of Consent for marital cases and also deadly against fixing the minimum age of marriage. The Age of Consent already raised to 13 in marital cases is not approved of by the public at large and further raising of it at the bidding of a few Indians of radical European ideas with little knowledge of the social customs, sentiments and religious beliefs of the people, is likely to strike at the root of the social fabric which has existed for generations and instead of actually affecting the reforms aimed at, will open outdoors for more seduction and rape in the country at large which has been accustomed by time honoured usage to look upon marriage and consummation of marriage just after puberty as a good protection against such crime. As already stated if the Age of Consent in case of marital intercourse be raised many of the girl-wives kept away from their husbands will fall prey to seduction of immoral neighbours. If again the age of marriage be fixed by law the guardians and parents will be prevented from making suitable matrimonial arrangement of their wards

during minority with a view to insure their proper protection when they attain puberty. If the legislature intends prevention of cohabitation before puberty, it has already done it and done more than that by making intercourse with a wife under 13 penal under the law. It will be disastrous to do anything more in this direction. Fixing the age of marriage will be arbitrary and against the religious tenets of both the Hindus and the Mohanmadans. It will prevent parents in their old age and at death bed from arranging the protection of their minor daughters.

21. I would certainly prefer to secure the object in view by social reforms, education and social propaganda. In fact among the educated class the marriageable age of girls is gradually and steadily rising. The Age of Consent also in marital cases is generally taken to be the age at which girls attain puberty. It will be highly impolitic to disturb the steady progress and to do anything drastic with a view to secure the result aimed at, all at once. Among the common people the fixing of age both of marriage and consent in marital cases will have more disastrous effect. Parents will not be able to make proper arrangement for their wards' marriage when they are minors. When they attain the age of puberty they will fall prey to seduction if the marriage is not consummated soon after for the simple reason that in the common people the sexual instinct, for reasons stated elsewhere, becomes highly developed from before the age of puberty.

I am therefore emphatically of opinion that no new legislation is necessary either for raising the Age of Consent in marital state or for fixing the marriageable age of girls but rather the Age of Consent in marital cases should be reduced. In any case this is a matter which should be left entirely to social reformers.

Written Statement, dated the 9th August 1928, of Babu NETAI CHARAN GHOSH, Judge, Small Cause Court, Dacca and Munshiganj.

1. I am not aware of any dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.

2. I am not in favour of the law as it is, but in my opinion an advance on the present law is justified for reasons stated in answer to other questions as stated below.

3. Crimes of seduction or rape are still frequent in our part of the country. Amendment of the law as made in 1925 has not succeeded in preventing or reducing such crimes. I would, therefore, propose to raise the Age of Consent in case of a husband to the 14th year and in the case of a stranger to the 16th year.

4. No. The amendment of 1925 has not been effective in protecting married girls against cohabitation before 13. Some cases have come to my knowledge where married girls conceived before 13. The steps I would suggest to make the law effective I have indicated above in answer to the third question.

5. Girls generally attain puberty in our part of the country between 13 to 15. This does not differ in different castes, communities or classes of society.

6. (i) Cohabitation before puberty is very rare in our part of the country and is possible only amongst the low-caste Hindus.

(ii—iii) Cohabitation is very common soon after puberty and it also sometime takes place before the girl completes 13 years. Such cases do not come to court.

7. No. I am not aware of any authority in our Hindu Shastras which prescribes any penalty for not consummating marriage before or at puberty.

8. Garbhadan ceremony has now become almost obsolete amongst the three higher caste Hindus, viz., Brahmin, Kayestha and Baidyas for they can now

seldom marry their daughters before the age of 14 owing to the prevalence of the dowry system. In rare cases, where girls can be married before attainment of puberty such ceremony is performed. The ceremony is generally performed amongst the "Nabasaks" that is the low caste Hindus, viz., "Koiburtas," "Napits," "Sad-gopes," "Telis," etc. It is always performed at the time of the first menstruation.

9. No. Attainment of puberty is no sufficient indication of physical maturity to justify consummation of marriage. I propose to postpone the consummation for 6 months at least after attainment of puberty.

10. At the age of 15 and not before can an Indian girl give an intelligent consent to cohabitation.

11. Consummation at puberty or soon after it but before full physical development of a girl, has sometime resulted in injury to her health and body and has also affected the child. This took place where the child was born before 14.

12. Life and death. I don't think can depend upon anything human. They depend upon God. But early consummation may injure the health of the mother and child as I have indicated above in answer to question No. 11.

13. I am not aware of.

14. Women in our part of the country do not generally favour early consummation of marriage for their children.

15—19. I have got no experience. I had no criminal practice. I am not a Judge on the Criminal Side. So I am not in a position to answer these questions properly.

20. I think that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. This, I think, would be more in consonance with public opinion in our part of the country.

21. I would rely both on the strengthening of the Penal Law and also on progress of social reform by means of education and social propaganda.

Written Statement, dated the 9th August 1928, of Mr. BASANTA KUMAR MUKERJI, Sadar Sub-divisional Officer, Comilla.

1. Yes, there is dissatisfaction as regards the age in sections 375 and 376, Indian Penal Code, and it should be increased to 16 under the fifth description in section 375. Section 376A as recommended by Sir Hari Singh Gour is necessary but I would increase the age from between 13 and 14, to between 14 and 15 for the lesser sentence of two years.

2. The present law of a reduced sentence if the wife be not under 12 years of age, takes away the deterrent effect of this section with regard to cohabitation with a wife above 12 and practically nullifies the very purpose for which it was intended.

3. Seduction and rape are both not infrequent offences in Bengal. The raising of the Age of Consent to 14 in 1925 has had no appreciable effect, as the margin of difference, between 13 and 14 is not very much. Raising the age to 16 would, I think, have a salutary effect.

4. I do not think this has had much good effect as the margin of difference was almost negligible and also because of the reduced sentence in cases mentioned in para. 2 above. Raising the age to beyond 15 would have a salutary effect.

5. Between 12 and 14 generally among all castes, communities and classes of Indian society.

6. Cohabitation before puberty is not common but there are instances of it. Cohabitation soon after puberty and before the girl completes 13 is more common. These cases do not come to Court at all.

7. Early consummation of marriage is due entirely to custom and not to religious injunction.

8. *Garbhadan* ceremony is performed but not extensively. It sometimes coincides with the consummation of marriage but usually immediately after the attainment of puberty.

9. Attainment of puberty is by no means a sufficient indication of physical maturity to justify consummation of marriage. Consummation should never take place before the girl has completed 15 years of age and certainly not before 2 years after puberty, if the health of the wife and her progeny is to be considered.

10. At age 15.

11. Yes. I know of two instances of acute types:—

(a) The wife was aged 12 and the husband was a college student aged about 20. He had come home during holidays and the day after he left, his wife was suffering from acute pain in her lower abdomen and showed signs of hysteria. The Civil Surgeon who attended on her was definite that it was due to early cohabitation and he even said that she was likely to be a hysterical patient all her life as a result of this indiscrimination. This was in a Hindu family of high respectability.

(b) The girl was aged 11 or 12, the man about 30 in a Muhammadan family of the cultivator class. She was taken to her husband's house on her mother-in-law promising not to allow the husband to sleep with the girl. This was not done and the girl's mother found her practically doubled-up with pain in her lower abdomen and took her home and had her treated. Six months later she was again taken to her husband's house on similar promise. A few days later her mother went and found the girl none too well and wanted to take her home. There was an altercation over this and the husband out of rage took his wife inside and committed unnatural offence on her in a most brutal manner. He was suffering from venereal disease and the girl came in for it shortly afterwards. It was with the greatest difficulty that her life was saved by sending her to hospital. The man was sent up on trial and was convicted by the Court of Sessions. I had myself enquired into the case when I was Sub-divisional Officer of Maldah and it was certainly one of the most abominable cases that can be imagined. The girl was of a very quiet and submissive disposition and was a mere stripling and quite undeveloped physically.

12. Early consummation and early maternity is certainly responsible for high maternal and infantile mortality, as well as for the poor physical and mental development of the people.

13. Among the educated and *Bhadralok* classes the marriageable age of daughters has perceptibly risen and opinion among this class is certainly in the direction of raising the Age of Consent.

14. No, not among the *Bhadralok* classes.

15. Medical examination even by Lady Doctors for determining age is mostly resented. External examination by Lady Doctors would be the only safe criterion to arrive at a reasonable decision regarding age.

16. Yes, undoubtedly, as in that case puberty will already have been attained if the Age of Consent be raised to 14 years or above.

17. I would much rather not make any distinction in the punishment of extra-marital and marital offences—as the reducing of punishment for marital offences takes away its deterrent effect very largely. Both these offences should constitute rape and the maximum punishment should be either transportation for life or imprisonment for ten years, as well as fine, or both.

18. There should be no difference in the procedure of trials for offences of these two classes.

19. All marriages should be registered and at the time of registration satisfactory proof of age should be forthcoming. When registering the birth of the first child the age of the mother should also be declared and proof obtained if necessary. The registering of the age of the wife both at marriage and again at first child-birth should be made compulsory by a penal enactment. The officer recording the age of the mother at birth of her first child, will be expected to make such further enquiry as may be necessary to determine the actual age of the mother.

20. Fixing the minimum age of marriage as has been done in some of the Indian States is the only sure means of checking early marriage and early consummation. Public opinion, however, may not favour this at the outset, and so, as a preliminary to this ultimate goal, penal legislation fixing a higher age of consent is the only other alternative probable.

21. Social reform by means of education and social propaganda is progressing but the progress is very slow and it seldom reaches the masses in the village. The social reform so far attained is confined almost exclusively to urban areas and to a handful of villages with progressive ideas and where education has spread.

The strengthening of the penal law is an absolute necessity towards progress in this direction especially among the masses, as it not only acts as a deterrent but it also helps to overcome certain prejudices and customs which people would not otherwise dare to ignore inspite of their convictions to the contrary.

Written Statement, dated the 10th August 1928, of KUMUD NATH ROY, Esq., Additional District and Sessions Judge, Mymensingh.

1. I am not aware of any such dissatisfaction. In my opinion the reason for want of such dissatisfaction is that the bulk of the people are *illiterate* and indifferent in such matters and prefer to take things as they are.

2. In my opinion the Age of Consent should be raised to 14 in the case of marital, and to 16 in the case of extra-marital offences. My main reason for making an advance on the existing law on the subject is that it is matter of common experience that the health of present day girls of all communities has considerably deteriorated owing to a variety of causes, which need not be enumerated here, and early motherhood is generally prejudicial to them. Moreover, people are showing an increasing desire to educate their girls, and it is desirable that their education should not be interfered with as long as possible. Section 361, Indian Penal Code, by making it penal to take or entice a girl under 16 years, practically gives recognition to the principle that a girl below 16 is not competent to consent to even go with any person who is not her lawful guardian, although that person may be related to her. (See also sections 372 and 373 for illustration of the principle.) There is no reason why she should be considered competent to consent to intercourse with a stranger below 16. Sections 366A and 366B, Indian Penal Code, go even further than section 361 in this respect. In the case of intercourse by the husband, the matter has always been properly looked at with somewhat less stringency.

3. Crimes of seduction or abduction and rape are unfortunately frequent in Eastern Bengal and some of the districts of Northern Bengal. I believe many cases are not reported or sent up by the Police, and my idea is that the state of things in many districts in this respect is such as cannot be contemplated without concern. I don't think that the amendment of the law made in 1925 has effected any improvement in this respect. I would propose the introduction of trial by a special tribunal, without the aid of a jury, and with only one appeal to the High Court, of offences under sections 366, 366A, 366B, 372, 373 and 376 (extra-marital), Indian Penal Code.

4. I am not aware that the amendment of 1925 has had any such effect as detailed in this question. I would propose the fixing by law of the minimum marriageable age at 14 in the case of girls, so far as Bengal is concerned, if it be possible to do so without violent opposition.

5. I am not competent to answer this question as a layman.

6. I am not in a position to answer this question fully, but I believe that the cohabitation commences in many cases before the girl attains puberty or the age of 13. No such case came to court during my experience, and I believe that such cases are very rarely reported.

7. I don't attribute the practice, if there be any, of consummation of marriage before puberty to any religious injunction. Consummation of marriage at puberty is, I believe, enjoined by the *shastras* in the case of Hindus. I am not aware of any penalty prescribed for breach of such injunction, which is regarded as a sin.

8. The *Garbhadan* ceremony is not, so far as I am aware, performed in this part of the country, and I am not in a position to answer the other questions in this connection.

9. I am not in a position to answer this question as a layman.

10. I think, in the case of Bengali girls generally, they can give such a consent at the age of 16, with a due realisation of consequences. But in the case of consummation in the marital state this should not be strictly insisted on as the guardians of the minor girls may be expected to know about her development.

11. I have come across a few such cases; but can't give details as I kept no records.

12. I consider early consummation and early maternity responsible for high maternal and infantile mortality and the physical and intellectual deterioration of the progeny in these days as the health of the people in general has considerably deteriorated now for various causes. It is also highly undesirable, in these days of high economic strain, that any addition to the family should take place before the head of the family can earn.

13. I am not aware of it.

14. I believe that among the higher and middle classes women don't favour early consummation of marriage for their children, but I am afraid the reverse is the case among the other classes on account of ignorance or illiteracy.

15. No difficulty is generally experienced in determining the age of the girl where there is medical examination. The difficulty where it exists may be minimised by a strictly reliable system of registration of births and not by a perfunctory and not always reliable registers of village chowkidars transcribed in the Thana Registers, or by production of horoscopes which may be fabricated. I would not suggest any other measures.

16. My answer is in the affirmative for obvious reasons.

17. I would separate such offences into distinct offences, the nature and maximum punishments under section 376 being, respectively, those as now provided, with this modification that the imprisonment for extra-marital offences should be rigorous. The imprisonment under sections 366, 366A, 366B, 372 and 373 should also be rigorous with transportation as an alternative. The punishment under section 363 should, in the case of an offence committed by a relative of the minor or insane person, be imprisonment up to 2 years, or fine, or both.

18. I would suggest trial (a) of extra-marital offences by a special tribunal composed of (1) a Sessions Judge, who shall be the President, (2) the senior Deputy Magistrate and (3) a Pleader, without any jury, and with a single appeal to the High Court, and (b) of marital offences by the District or Additional District Magistrate or other senior first class Magistrate.

19. I would not suggest any other safeguard as I consider the existing safeguards to be sufficient.

20. I think that the penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than fixing the minimum age of marriage, though I would very much like the later legislation, but I think in the present state of society it would create much discontent. I don't think any of the two alternatives would be in consonance with public opinion among the vast majority of uneducated and backward classes, though I think the higher and middle classes would generally welcome a statutory minimum age of marriage.

21. For extra-marital offences I would certainly prefer to rely on the strengthening of the penal law. For marital offences also I would do so in the present backward state of the community as a whole, especially as there is hardly any hope of securing the object in view by means of education purely and mainly on a secular basis, as it mostly obtains at present.

Written Statement, dated the 10th August 1928, of Mr. AMAL-KRISHNA MUKERJI, Deputy Magistrate, Faridpur, Bengal.

1. It cannot be said that there is any general dissatisfaction with the State of Law as to the Age of Consent as contained in sections 375 and 376, Indian Penal Code. In fact while the bulk of the people on account of their illiteracy are completely in the dark about any such law, a fairly high proportion amongst the educated classes, even, is only vaguely aware of its existence. But there is dissatisfaction to some extent amongst a certain section of the educated people who think about social evils and specially amongst educated ladies who are waking up to the disabilities under which their less educated sisters suffer.

2. The following circumstances justify, in my opinion, an advance on the present law :—

- (1) Early marriage has been an almost universally acknowledged evil amongst the Hindus and Mahomedans and specially amongst the Hindus. It is one of the principal causes of the physical and the consequent mental degeneracy of the race. Normal healthy children cannot be born of parents, physically immature.
- (2) The problem must be tackled seriously if we are not to die out as a race. So long we have been simply tinkering with it. The Age of Consent was raised from 10 to 12 so far back as 1891 by Act X of that year. The sensational case of *Queen-Empress vs. Hari Maiti* reported in *I. L. R., Cal., XVIII, 49*, in which the husband was tried for having caused the death of his child-wife aged 11 years and 3 months by having several intercourse with her, drew the attention of the Government and the public to the glaring defect in the law about the Age of Consent and to the fatal consequence likely to follow from such acts. The age was therefore raised to 12. Since 1891 there has been practically no further advance. In 1925 the age was raised to 13 in the case of husbands and to 14 in the case of strangers. The following reasons were given when Act XXIX of 1925 raising the age, as mentioned above, was passed :—“ Books of medical jurisprudence establish the fact that the age of puberty in India is attained by a girl upon her reaching the age of 14. Even though puberty may be reached at that age, it is obvious that girls are unfit for sexual cohabitation till they are older and more developed in physique and strength. The appalling infant mortality in this country is partially ascribed to early marriages and the consummation which follows with immature girls. It is, therefore, not only for the protection of minor girls but also of their progeny that the Age of Consent should be raised to at least 14 years.” It is admitted here that though puberty may be reached at the

age of 14, the girl is not fit for cohabitation till she is older and more developed in physique and strength. So there are reasons why the age should be raised above 14.

- (3) It is a crying and cruel shame that our women should be deprived of the joys of a happy girlhood. There is a sudden jump from childhood to maternity.
- (4) Another ugly feature in this connection is the early age at which girls are compelled to lead a life of shame in a "City of the dreadful night" like Calcutta. Those who have watched the night life of these places must have come across many such cases.

All these circumstances justify, in my opinion, an advance on the present law.

3. Cases of rape are not frequent in Bengal. In 1926, 89 true cases of rape were reported (Annual Statement 2 (Criminal), Report on the Administration of Criminal Justice in the Presidency of Bengal, 1926) and 37 persons were convicted of the offence. Most of these cases occur in the districts of Mymensingh and Backergunge. But offences of kidnapping, abduction and seduction are pretty frequent. In 1926, 848 cases of kidnapping and abduction and 2,786 cases of seduction and offences relating to marriage were reported as true in this Province. The amendment of the law in 1925 has not succeeded in any way in preventing or reducing these cases. Very few people know that the age has been raised to 14 outside the marital state. Even some Magistrates are, I believe, ignorant of it. In order to make the law effective, special attention of the people and of the Magistrate should be drawn to the amendment made and its implications. The increase in the age is also so slight that no practical improvement can be expected from it. If the end aimed at is to be achieved there should be a substantial increase in the age, at least, outside the marital state.

4. It must be said that the amendment of 1925, raising the Age of Consent within the marital state to 13 from 12 has not been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit by postponing the consummation of marriage or by stimulating public opinion or by putting off marriage beyond 13. The increase has been so slight that very little attention has been drawn to this change. The bulk of the people do not even know that there is any law about the Age of Consent. While girls are married at 11 or 12, the marriage is usually consummated soon after the commencement of menstruation. This has been the case when the age was 12 and it is the case still though the age has been raised to 13. There has been an increase in the age of marriage as regards both girls and boys but this is not due to the law about the Age of Consent but to various other reasons. As regards steps by which the amendment could be made effective in protecting married girls, I think it would be futile to expect that any change in the penal law will have much effect. As contemplated in Mr. Sarda's Bill, a minimum age of marriage will have to be fixed and child-marriages penalised, if such protection is to be given. There should, of course, be also a change in the Penal Code *pari passu*.

5. The usual age at which menstruation commences is from 11 to 13 years in the case of the *bhadralok* classes in good circumstances and from 12 to 14 years in the case of agriculturists, labourers and of the poorer *bhadralok*. It is hastened or put off on account of various causes, physical as well as mental. If a girl is married at 10 or if she, frequently, associates with married children of similar age, she will probably begin to menstruate at about 11 while if these causes are absent, she will not, before she is 12 or 13. But medical authorities agree in saying that puberty is not a sudden event but a process spread over months or years. The commencement of menstruation is one of the steps and it is usually one of the early steps towards puberty which is not generally attained upon menstruation but subsequently. Normally a girl will not attain puberty before she is at least fourteen.

6. Cohabitation is not common here amongst any class or classes of people before menstruation. As many girls are married at the age of 10 or 11, cohabitation commences soon after menstruation and before the girl completes 13 years if menstruation commences earlier. As I have mentioned before, puberty is not generally attained upon menstruation but subsequently and normally a girl will not attain puberty before she is 14. So it may be said that cohabitation is common before puberty amongst all classes of people except those who have received high education and are liberal-minded and not orthodox.

These cases do not come to court. I have never come across any of them during my experience as a Magistrate for 23 years. The reasons are obvious. Unless the girl suffers any serious injury as in the case of Hari Maiti referred to above, there is no reason why the girl or her relations will come to court. When a girl is married before she is 13, her parents or guardians take the risk knowingly of her being subjected to sexual intercourse as soon as menstruation commences, though she may be under 13 at that time.

7. There is no religious injunction, as far as I know, compelling consummation of marriage before or even at puberty. There are passages in the Mahabharat (the popular vernacular edition) from which people may be led to believe that in those days there was a religious injunction on the husband to cohabit with his wife on the completion of the monthly course. The Aryan Hindus were then early settlers in the lands and were few in number. Men were wanted and an injunction of this nature may have been laid down for increase of population, just as, "Be fruitful and multiply" was the divine command on the Hebrew. But there are no injunctions about early consummation of marriage. There is a popular *Sloka* (verse) laying down that a girl must be married before the commencement of menstruation or the ancestors up to the 7th degree of the parent who fails to marry her daughter earlier will be defiled by the menstrual blood. But there are also passages in Manu laying down that a girl should not be married early if a suitable husband cannot be found for her. I do not attribute the practice of early consummation of marriage to any religious injunction but it is only a natural consequence of early marriage. The custom of early marriage may be attributed to some extent to the verse referred to above about the defilement of ancestors if a girl is not married before commencement of menstruation.

8. *Garbhadan* ceremony is not performed in West Bengal, as far as I know. But in some parts, as in East Bengal, a second religious ceremony called *Garbhadan* is gone through after marriage at the time of the commencement of the menstruation. This coincides generally with the consummation of marriage. It is generally performed with the commencement of menstruation. In West Bengal no religious ceremony is performed at the time but amongst some castes and in some families some customary formalities are gone through by the women of the family. In West Bengal the priest is not generally asked at these ceremonies while in East Bengal he is called to officiate and in many cases the marriage rites are repeated.

9. I do not consider the attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage. Of course, medical men are the best judges about it but from my experience I find that generally, girls in our country do not attain sufficient maturity physically till they are 17 or 18. I think consummation may be justified without any risk to the health of a girl and that of her progeny when she reaches the age of 18 and not before.

10. I think a girl will not be competent to give an intelligent consent to cohabitation with the full realization of consequences before she is 18. She is not considered to have attained majority legally in all other transactions before she is 18. She cannot enter into any business transaction before she attains this age and I do not see how she can be expected to give consent for an act of this nature which is of such vital consequences to her and to her progeny and will mould her whole life, till she reaches legal years of discretion.

11. In my experience I have come across cases in which cohabitation just after puberty but before full physical development of a girl has resulted in injury to her health and prejudicially affected her progeny. Details are as follows:—

- (1) Girl aged 13; she was married at about 13 and her husband had cohabitation with her. A child was born when she was 14. There was great difficulty at the time of child-birth and the mother suffered for about a year from genital diseases and weakness. The child (male) was puny and weak, could not walk or speak even at the age of 4 years and though he could walk at the age of 5, he is dumb.
- (2) Girl aged 12, became mother at about 13; she suffered continuously for a year from various diseases just after child-birth; became a permanent invalid and died a premature death. The child, however, was not affected in any way.

12. I consider early consummation and early maternity responsible to some extent for high maternal and infantile mortality in the country. The following statistics from the Census Tables of 1921 are interesting:—

Sex proportion in death at each age.

Bengal.		England and Wales.	
Age.	Female deaths per 1,000 male deaths 1911-20.	Age.	Female deaths per 100 male deaths 1910-12.
15—20	1,254	15—25	88
20—30	1,214	25—35	85

Mr. Thompson, Superintendent of Census Operations, Bengal, in 1921, remarks as follows:—

“It would appear that there is a phenomenal excess of female mortality in Bengal during the first part of a woman's reproductive age period. Deaths in child-birth are, perhaps, not remarkably numerous but the number of women who suffers from disorders which are traceable to the time of the birth of their children is enormous. Much has been said and written of the evils of infant marriage, resulting in the survival of child-widows condemned to a life of austerity and very often of drudgery and so on, but to the critic of these statistics the evil which does far more harm to the women of this country is the custom that ordains that a woman must not only be married but live the life of a married woman immediately she attains puberty. It may be said that the custom of deferred marriage which prevails in Europe is the artificial and the Indian custom the natural one, but there seems no doubt which is the less harmful to the health of the female population.”

Children born of immature parents cannot be expected to be physically healthy. So early consummation and early maternity are responsible to some extent for the poor physique of the people in Bengal. Physical deterioration is bound to lead to intellectual degeneracy.

13. I do not think that there has been any development of public opinion in Bengal in favour of extension of the Age of Consent in marital cases since the amendment of the law in 1925. Amongst the educated *Bhadralok* classes, the age of marriage is gradually rising for various reasons. The mass of the people who are illiterate are content to follow blindly the age-long custom of the country. There is a feeling only amongst a certain section of the educated classes who are liberal in their views and specially amongst educated ladies that the age should be raised. As regards extra-marital cases there has been a development of public opinion amongst the Hindus about increasing the Age of Consent on account of frequent cases of seduction of girl-widows.

14. Women are not in favour of early consummation of marriage for their children. They like, however, to see their girls married when they are 16 or 17.

15—16. Difficulties have been experienced in determining the age of girls in such cases as "all but a very small proportion of the people have only the vaguest ideas of their age". It is difficult for medical men to tell the exact age in such cases. I do not think that the difficulty will be materially reduced by raising the age to 14 but it will be certainly minimised if the age is raised to 17 or 18.

17. Extra-marital and marital offences should be separated into different offences. As regards the latter the guardians of the girl are practically accessory to the offence while about the former there is no such excuse. I do not think that there is any necessity to change the nature and amount of punishment which is now prescribed for these offences, viz., transportation for life or imprisonment of either description up to 10 years in the case of extra-marital offences and imprisonment of either description up to 2 years as regards the latter.

18. The procedure of trial should be different, as it is now. Marital offences should be non-cognisable and bailable while the other class should be cognisable and non-bailable. The husband cannot be treated as an ordinary ravisher. If marital offences are made cognisable, it will involve the unwelcome intrusion of the police into domestic sanctity. The special provisions of section 561, Criminal Procedure Code, should also be retained as a further safeguard.

19. I do not think any other safeguards beyond those existing at present against collusion or improper prosecution or extortion, are necessary to protect the offender. As the law stands at present, the threat of a criminal charge, whether true or false, amounts to a fear of injury, contemplated in the definition of "Extortion" in the Indian Penal Code.

20. Mere penal legislation fixing a higher Age of Consent for marital cases will not be at all effective if it is not followed up by legislation fixing the minimum age of marriage. The law raising the age from 10 to 12 and the subsequent amendment raising it from 12 to 13 and 14 have all along remained a dead letter. Either kind of legislation will be unpalatable to the orthodox section of the Hindu community but will be welcomed by the educated class with liberal views.

21. All progress must, of course, depend on education and social propaganda and there is no doubt that an advance has been made. The census figures of 1921 show that there has been a steady rise in the average age at which marriage takes place. The age both for males and females is rising and the rise has apparently been more decided during the last decade (1911--1921) than in previous ones. The tendency of public opinion to favour later marriages has been a significant one. It has not, however, made any appreciable impression on the rule that a girl must be married as soon as she has attained puberty, for the proportion of girls unmarried between 15 and 20 is still only 55 per mille and only 39 per mille in the case of Hindus.

The census figures show that the average age of the bride in a marriage in Bengal is 12½ and that of the bridegroom rather under 20. Still the proportion of married girls aged 10 to 15 per thousand is 622 amongst Hindus and 504 amongst Mahomedans; as many as 8 girls per 1,000, under 5 have been married and as many as 73 per 1,000 between 5 and 10. The corresponding proportions for Hindus are 8 and 91 and for Mahomedans 9 and 64. Progress has been, therefore, slow and I think that there is necessity of strengthening the penal law to eradicate the evil of early marriage.

The age is rising steadily, as mentioned above specially amongst the *Bhadralok* classes. But there are certain castes amongst whom early marriage in an extreme form is very common even now. There is a marked deficiency in the number of females in proportion to that of males amongst them. Thus amongst the *Subarnabaniks*, the *Napits*, the *Dhopas*, the *Baruis*, *Tantis* and others, it is the custom to marry girls of 8 or 9 years to males aged

30 to 40. The bridegroom has to pay the guardian of the girl handsomely and so the bulk of the males amongst them have to earn money and to wait till they are 30 to 40 before they can afford to pay for a girl of 8 or 9 years. There is, no doubt, that legislation about fixing a minimum age of marriage is called for in these cases.

About extra-marital cases, I think that there is a consensus of opinion that the Age of Consent should be raised, and, for reasons already given, I think the age should be 18. As regards these offences, the object in view cannot be secured, for obvious reasons otherwise than by strengthening the penal law.

Written Statement, dated the 9th August 1928, of Mr. KHONDKAR ALI TAIB, B.C.S., Deputy Magistrate, Mymensingh (Bengal).

I have considered the questions only in the light that the committee is enquiring about the desirability of amending Sections 375 and 376, I. P. C. The country is not sufficiently advanced to appreciate Mr. Sarda's Bill which will cause more mischief than good in the present political atmosphere of the country. In my experience child marriage is more prevalent in Bengal than any other province of India. Every educated resident of Bengal has realised that this has ruined our national vitality and that this is responsible for physical and mental deterioration of our manhood. It cannot be denied that there is some sort of awakening in the right direction but still there is ample scope as only a few handful of men of this country have taken up the problem seriously. When people cannot bring about the reformation by themselves, the State should step in and improve the situation by legislation.

In my opinion the proposed amendment of Sections 361, 375 and 376, I. P. C., is desirable and that this has in no way encroached up religious susceptibilities of the country. There may be some sort of opposition but no importance needs be attached to it. Further I may point out that at least in Bengal there is no apprehension of this being source of harassment or extortion.

Further I beg to add that I am willing to be examined orally in camera if the committee so desires.

Replies to the questions with reasons are herewith annexed.

1. No. General public is not alive to the situation and that common people has not yet taken any serious consideration about the Age of Consent.

2. (i) The law should be revised as some sort of check is necessary for improving the national vitality.

(ii) The proposed amendment is indispensable because public at large will never bring out any reformation unless they are compelled to do so. Gradually they will appreciate the improvement. At present female diseases and infant mortality are so numerous that some sort of legislation is required.

3. Seduction and rape were frequent in some parts of Bengal as well as traffic in immature girls for the purpose of prostitution and that only few of them come to court. The amendment of law in 1925 has not brought out any improvement but the Magistracy has effected some improvements by these steps. Magistrates should be given wide powers in bringing down such crimes and that habitual procurers and seducers may also be dealt under Section 110, Cr. P. C.

4. (1) The amendment has not been able to check consummation with immature girls.

(2) I have met many educated people who are opposed to marriages of girls below the age of 14 but sometimes grown up girls are not preferred in the marriage market. At the present state of society efforts are made to

marry away girls as early as possible in order to avoid disappointments in the future.

I have occasions to notice in East Bengal that higher class people have taken up the problem seriously, among whom child marriage is gradually disappearing. Cultivating and labouring class marry away their female children even during their childhood with persons who are fit to be their father with the result that abnormal consummation invariably take place without any eye to disastrous consequences.

(3) Said enactment has not been able to put off child marriages. In my opinion, in the present political atmosphere of the country, marriageable ages need not be raised by legislation because such steps would be misconstrued and exploited as interference with religion.

Considerable advances may be made in stopping child marriages and consummation with immature girls by modifying Section 361, I. P. C. and 488, Cr. P. C. Under the Hindu law husband becomes the natural guardian of the married minor girl, soon after her marriage. Thus former has an unlimited control over her persons and therefore there is nothing to check him from immature consummation. In 17, Calcutta, page 20, in the matter of Dharani Ghose, the father of a minor child wife was held guilty under Section 363, I. P. C., for taking the minor away from her husband. The Mohammedan law lays down that mother of the married girl is her guardian till she attains puberty and that age of puberty has been fixed to be 12. Thus it will be seen that there is nothing which can protect minor girls from unnatural lusts of their husbands. Still peculiar social custom of the country and present political situation would not justify legislation to abolish early marriage. Therefore some means should, if they are inconsiderate, be found which would discourage and cause hinderance to such marriage. If the said guardianship of married minor girls be vested with their parents irrespective of caste or creed, till they attain the age of 14 or 15 with option that such parents may keep the girls with them up to that age for which they may also claim maintenance. In my opinion this may produce a good deal of check to the early marriage and so to early consummation. Besides the revision of above sections powers under Section 552, Cr. P. C., should also be vested with the Sub-divisional officers so that latter may keep minor girls from their husband and allow them to remain with their parents till they attain the age of maturity.

5. Usually girls in Bengal attains puberty between the age of 13 to 14, but child-wives have been found to attain the same much earlier. Prostitutes are said to know some processes to bring it much earlier by artificial means. I know of a girl who was married to an Engineer at the age of 11, she gave birth to a daughter when she was 12 and this daughter of hers was married at her eleventh year and she too bore a child at her twelfth year thus the above girl became a grandmother in her 23rd year. They are still alive but these girls do not live. They merely exist.

Yes, girls of rich people attain puberty much earlier than labouring classes, in latter class many girls attain puberty artificially by espousing with men who are fit to be their fathers. And such a girl coming in contact with an adult man attains puberty before time.

6. (1) Cohabitation is not very common with a girl before she attains puberty among *Bhadralog* class but it can't be said that it is rare. Labouring class and cultivating class marry child-wives and then use them without waiting for their natural development.

(2) Only among Hindus there is a ceremony known as Gohna.

(3) In cases of early marriage cohabitation takes place as early as 13, even before that age say at 11th or 12th year.

Rarely cases of rape by husband comes to court but at times owing to party factions in villages and where immature cohabitation brings about any material injuries to the girls as the result of such cohabitation their guardians may come to court.

7. In Bengal there is no religious injunction that cohabitation should take place before puberty. There is a very dangerous superstition prevalent that venereal diseases are cured by cohabitation with girls before she had attained puberty and this is another reason of such consummation in some cases of rape.

Among certain class of people not under the influence of English education there is a practice that consummation with child-wife should take place soon after the appearance of menstrual flow.

8. Among Hindoos only, Gauna or second marriage is performed.

9. Appearance of menstrual flow is not sufficient indication that the girl is fit for consummation as instances are not rare that girls of 8 only had such flows without any other signs of womanhood. She is fit only when she is fully developed. Between the age of 14 to 15 such development takes place.

10. Between the age of 14 to 18 a girl is competent to realise what cohabitation is and what are its consequences.

11. Answers to this question can be properly given by medical men only.

12. It is the common knowledge that early consummation and maternity are responsible for maternal and infant mortality. Such girls invariably suffer various kinds of female diseases and drag on their lives most miserably. National vitality is thus being ruined with mental and physical deterioration.

13. General public has not the education or inclination to take up the question by themselves without some sorts of compulsion. I have discussed the matter with many gentlemen and they are of opinion that people should be compelled by legislation to stop early consummation and early maternity. Some educated gentlemen have seriously taken up the question but they are handicapped by social laws prevalent in the country and that they would welcome every legislation to improve the situation by raising the Age of Consent.

14. Women in our country favour early marriage because that help them to dispose of their minor daughters.

15. Determining the age of girls some difficulty is met because parents cannot furnish details or produce documentary evidences regarding the date of birth of their children and that medical opinion is not self-sufficient. Their opinion is based on teething and physical appearances. In moffasil towns age cannot be determined by verification of bones; physical features are practically same between the age of 12 to 14, and that there are some distinct changes after that period.

16. Yes, *vide* above answers.

17. Yes, marital offences may be tried by experienced Magistrates of 1st class because most of the cases do not come to court through the fear of exposure, as well as for expenses involved in such cases. Aggrieved persons in marital cases should be encouraged to come to court. This may be done by vesting powers to Sub-divisional Officers. However such cases should remain non-cognizable as at present and I think the proposed amendment will meet the situation.

18. Procedure for trial should be that of warrant case but these cases may be made triable by Sub-divisional Officers also.

19. If these cases be placed in the hand of Magistracy, without any police interference, there will not be any improper prosecution or harassments. As a safeguard, such prosecution should be launched after a proper Magisterial enquiry.

20. I think penal legislation will be sufficient for the present to meet the situation. Age of marriage should not be restricted in the present political atmosphere of the country.

21. I would prefer both the methods as well as a good deal of propaganda by Health Officers, Circle Officers and Sub-divisional Officers.

Written Statement, dated the 12th August 1928, of Babu MONO-RANJAN BANERJI, B.L., Pleader, Judge's Court, and Municipal Commissioner, 35, Sutrapur Road, Dacca.

1. There is no dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376, I. P. C. But there is a desire amongst the liberal section of educated community that the age should be raised.

2. The law as it is should not be retained but an advance should be made on the present law as it will not encourage motherhood at any early age before full development of the girl causing deterioration of health both of the mother and the child.

3. Seduction and rape are frequent in East Bengal. Amendment of the law in 1925, raising the Age of Consent to 14 years, has not been successful in preventing or reducing cases of rape outside the marital state or improper seduction of girls for immoral purposes. In my opinion Age of Consent in such cases should be raised to 18 years. In most cases girls are forced to concede due to persuasion, intimidation and coercion. The girls under 18 years are not likely to attain the full power of discretion and power of understanding the consequences to her and to her family. There should be heavy and deterrent punishment for seduction and rape. The persons who help the seducer in any way should also be liable to punishment as the consequences of seduction and rape to the girl and her family are disastrous.

4. The law had nothing to do in protecting married girls against cohabitation with husbands. As soon as the girl attains puberty consummation of marriage is allowable in Hindu society. The amendment has however stimulated public opinion and thereby protected married girls to a certain extent against cohabitation with their husband.

Amongst the educated Indians the age of marriage has been raised beyond 13 years owing to desire of the parents to educate their girls and to reform movement and also due to economic condition.

5. The girls usually attain puberty between the age of 13 and 14. It differs in different castes and communities. Amongst the backward classes puberty is attained at an earlier age due to social environment and early marriages.

6. Cohabitation is not common in our part of the country before puberty but it is common soon after the girl attains her puberty. It is not common before the girl completes 13th year. These cases do not come to court.

7. There is no such practice of the early consummation of marriage before puberty. Hindu religious injunction is opposed to consummation of marriages before puberty. Religious injunction allows cohabitation after puberty.

8. As the marriage of girls of upper classes generally takes place after puberty the "Garbhadan" ceremony with them has become out of date. But in cases where girls are married before puberty the ceremony is performed soon after attainment of puberty and before consummation of marriage.

9. Attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriages. At the age of 16 and generally two years after attainment of puberty a girl's physical development may be considered to be enough to justify such consummation without injury to her health and that of her progeny.

10. At the age of 18 a girl in India would be competent to give intelligent consent to cohabitation with a due realization of consequences.

11. During my experience I have come across cases in which cohabitation before or after puberty but before physical development of the girl resulted in injury to her health and prejudicially affected her progeny.

12. The early consummation of marriage and early maternity is responsible for high maternal and infantile mortality and other result vitally affecting the intellectual and physical progress of the people.

13. Yes, amongst educated class there has been further development of public opinion in favour of the extension of Age of Consent in marital and extra-marital cases since the amendment of 1925.

14. Women in our part of the country do not favour early consummation of marriage for their children.

15. Yes, difficulty has been experienced in determining the age of girls in connection with offences under Sections 375 and 376, I. P. C. Law cannot compell the girl to be examined by a doctor. The medical examination on the other hand is valueless. Remedy in my opinion lies in raising of Age of Consent to 18 years.

16. Difficulty or margin of error in determining the age would be materially reduced or minimised if the Age of Consent is raised to 18 years.

17. Yes, I would like to separate extra-marital and marital offences into different offences. In marital offences public shame would be sufficient punishment and therefore nominal punishment would serve the purpose. In extra-marital offences heavy and deterrent punishment should be given.

18. Yes, there should be difference of procedure of trials for offences within and without marital state. In marital offences ordinary procedure may be adopted but in extra-marital cases provision for speedy trial with experienced and reliable officer who knows the customs of the land well, should be made.

19. I would suggest that Section 120B, I. P. C., should be made largely applicable in extra-marital cases to safeguard against collusion to protect the offender. Improper prosecution or extortion is not likely to take place as the relative of the girl will naturally try to hide such offences. In Hindu community such improper prosecution or extortion seems to be unthinkable.

20. Legislation fixing the minimum age of marriage will certainly be more effective than fixing a higher Age of Consent.

21. I would prefer to rely on both legislation as well as on education and social propaganda to secure the object in view.

Written Statement, dated the 13th August 1928, of Babu SARAT CHANDRA GUHA, M.A., B.L., Chairman, Municipality, Barisal.

1. The present state of the law as to Age of Consent as contained in Sections 375 and 376, I. P. C., appears to be rather lower than what it should be. As the matter is of vital importance affecting not only the girl personally but the future progeny of the nation, no consent should as a rule be considered valid unless it is given by a person who has reached the age of discretion which cannot be below 16 years even in this country.

2. The Age of Consent should be raised to 16 years in non-marital cases but in marital cases it may not be raised beyond 13 years as it exists at present, until the maximum age of marriage for a girl be fixed by law. Because if you allow a married couple, the wife being below 16 but above 13, to live together, as they often do, it cannot be expected that they would always be able to exercise self restraint in such matters. Hence the better policy would be to fix the minimum age of marriage at 14 years and then raise the Age of Consent as between husband and wife to 14 years.

3. There are occasional cases of seduction or rape in our part of the country. I do not think that raising the Age of Consent to 14 has succeeded in appreciably reducing cases of seduction or rape outside the marital state. As the majority of such cases occur in the case of girls who are above 14 years of age. However, it would be more effective for the purpose of punishing the offenders if the Age of Consent be raised to 16 years in non-marital cases.

4. The raising of the Age of Consent within the marital state to 13 years does not seem to have been effective in protecting married girls against cohabitation with husbands within the prescribed age limit by postponing the consummation of marriage, though it might have to a certain extent stimulated public opinion in that direction and put off marriage beyond 13 in a small number of cases among the educated classes.

To make it effective, the minimum age of marriage should be fixed at 14 years as proposed by the Select Committee on Mr. Sarda's Bill.

5. The usual age at which girl attains puberty in our part of the country is between 12 to 14 years. There does not appear to be much difference in this matter between different communities. But puberty is generally accelerated after marriage.

6. Cohabitation is common within the marital state soon after puberty which may happen in some cases before the girl completes 13 years. Cohabitation must be rare before puberty.

Unless there be any serious injury, no such cases ever came to light.

7. The early consummation of marriage soon after puberty is partly due to religious injunction and partly to custom. The religious injunctions are contained in Raghunandan's Smriti—

অষ্টবর্ষ্য ভবেৎগৌরী নববর্ষাচ রোহিণী
দশমে কন্যকা প্রোক্তা অতঃ উর্দ্ধং রজস্বলা ।
তস্মাৎ সংবৎসরে প্রাপ্তে দশমে কন্যকা বুধৈঃ
প্রদত্তব্য প্রযত্নেন ন দোষঃ কাল দোষজঃ ।
কন্যা দ্বাদশ বর্ষাণি যাহ প্রদত্তা গৃহে বসেৎ
ব্রহ্মহত্যা পিতৃস্তম্ভাঃ সা কন্যা বরয়েৎ স্বয়ম্ ।
পিতৃ গৃহে চ বা কন্যা রজঃ পশ্চত্যসংক্লতা
ব্রহ্মহত্যা পিতৃস্তম্ভাঃ সা কন্যা বৃষলী স্মৃতা ।

8. Garbhadan ceremony is usually performed soon after puberty and is meant to be anterior to consummation of marriage.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. At least two years after puberty a girl may be considered physically fit for child bearing.

10. When a girl is at least 16 years of age she may be considered competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. I have no such definite experience but I have known cases in which premature child bearing led to the death of the mother or the child both.

12. I consider consummation and early maternity responsible for high maternal and infantile mortality.

13. Public opinion in favour of extension of the Age of Consent in extra-marital cases appears to be really general. In marital cases, it considers the fixing of the minimum age of marriage to be more effective than merely raising the Age of Consent, which would always remain more or less a dead letter.

14. As far as I know women in our part of the country now-a-days do not favour early consummation of marriage for their children. Only some ignorant women may think so.

15. There are always difficulties in determining the age of girls in connection with offences under Sections 375 and 376, I. P. C. These difficulties may be minimised by keeping correct public register of births. The present registers do not seem to be often accurately kept.

16. I cannot say.

17. Certainly, extra-marital and marital offences should be different. As regards marital offences, the maximum punishment need not be more than three months' imprisonment or fine or both. As regards extra-marital offence the maximum should be three years' imprisonment and fine, when there is consent in both cases given by a girl who has not reached the Age of Consent fixed by law.

18. The present procedure for trial of such cases seems to be fairly satisfactory.

19. I do not suggest any safeguards beyond those existing at present, except that in every such case there should be a preliminary enquiry by a Magistrate before the accused is summoned.

20. I consider as stated above that in marital cases legislation fixing the minimum age of marriage would be more effective than penal legislation fixing a higher Age or Consent. As prosecution in marital cases must not only be very rare and difficult to prove but must lead to conjugal unhappiness and separation of husband and wife. Thus the remedy would very often be worse than the disease. Fixing the minimum age of marriage appears to be more in consonance with intelligent public opinion.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view and not leave it to the progress of social reform by means of education and social propaganda, as in this country where the mass of the people is steeped in dense ignorance, illiteracy and superstition, such social reform would require a very very long time to achieve this object, while our progeny would go on deteriorating to an alarming extent. The recent cases of Sati in Barrah should be an eye opener to all as to the tenacity with which most of the Indians cling to an old custom, however irrational and prejudicial it may be.

Letter, dated the 13th August 1928, of Mr. A. G. R. HENDERSON, I.C.S., District and Sessions Judge, Mymensingh.

With reference to your letter No. 42-A. C. C. dated the 28th July, 1928, I have the honour to state that I do not feel competent to express an opinion on the various matters raised in the questionnaire of your Committee except with regard to questions 15 and 16. In criminal cases the prosecution are bound to prove that the girl is below the age laid down in the statute. Apart from definite signs of the absence of puberty it is not always easy for a medical witness to express a positive opinion about the age of a girl: but the higher the age in the statute, the easier it is to prove that a girl who has not reached puberty is below that age.

Written Statement, dated the 15th August 1928, of Babu DINA NATH CHOUDHURY, B.L., President, Bar Association, Mymensingh.

* The change of law effected by Act X of 1891 raising the age limit in section 375 of the Indian Penal Code from 10 to 12, gave rise to considerable commotion in almost all the communities in the country, specially among the Hindus, as it was regarded as a serious encroachment on religious rights, non-interference with which was guaranteed by the Proclamation of

Queen Victoria in 1858. The law was considered defective, inasmuch as it did not make any distinction between a marital offence and that committed by a stranger. The amending Act 29 of 1925 by which the age limit in general has been raised to 14 years and in case of marital offence to 13 years has created greater discontent in the land amongst the various communities, as the act is in defiance of public opinion has made further intrusion on social and religious liberty of the people, whatever justification there may have been for the legislature of 1891 which was enacted after the Penal Code had been in operation for over 30 years and whatever grounds there may be for the amending Act 29 of 1925 about 34 years after the preceding amendment, there seems to be no reason why so soon after the passing of the Act of 1925, there should be an attempt to create a tumult in the country from one end to the other to raise the age limit still further. So far as marital offences are concerned, people have a just grievance.

2. (1) Social and religious customs can scarcely be changed by legislation. Any reform in this respect must proceed from the people themselves. As education will advance ideas of people will also be changed; and when people will be conscious about the necessity of any particular reform they will take the initiative of their own accord. In the matter of the Age of Consent the law so far as it relates to marital offence, should not be disturbed. In case of strangers, if the age limit be deemed insufficient, there may not be much opposition in raising it further, owing to spread of education and alternation in the economical condition of the country there is already a growing tendency to delay marriage of girls in almost all classes of society. With the Hindus marriage is a sacrament, it is to be celebrated before the appearance of puberty in the girl and certain rites are to be performed on the appearance of the menstrual course before which sexual intercourse is not permissible under the shastras. To them there is much cause for resentment as was the case on the occasion of the passing of the Act of 1925. The retention of the present age limit fixed by the Act of 1925, may be favoured by the people for marital cases but any attempt to raise it further will be opposed. The grievances of the Hindus and all other communities will continue unless the punishment provided for marital offence in cases where the girl is below 12 years of age be substantially reduced.

(2) Further raising of the age will create technical offence in law without any benefit to the society and no household will be free from the constant terror of being hauled up before the criminal court and peace and prosperity of all families will be at stake. There is no need for such a legislation which will be fruitful of such evil consequences.

3. Crimes of seduction or rape frequently occur in this district mostly among the Mohammedans. What effect the amendment of the law made in 1925 has produced, cannot be judged without looking into statistics for the purpose. Apparently it has not reduced or prevented the commission of crime outside marital state, nor has there been any diminution of cases of improper seduction of girls for immoral purposes. The law has been in force only 3 years. Its provisions are not known as widely as it should be. It is premature to hazard any opinion about the result of its working. My idea is that prevalence of crime of this class will continue so long as mass of people remains illiterate and uneducated.

4. It is very difficult to answer this question. Offences under Section 515, I. P. C., committed by husbands upon immature wives under 12 years of age even after the passing of the Act of 1891, are very few as the reported cases show. The law may be said to have been practically a dead letter. According to the custom in the society wife generally sleeps with the husband. If she is physically capable of having sexual intercourse with her husband, it is extremely doubtful that the existence of the legislative prohibition embodied in the Act of 1925, will have effect if the wife is under 13. No legislative protection seems to be necessary for protection of girls under 13, as instances of any physical injury caused by infringement of the law are very rare.

(1) Postponement of consummation of marriage by legislative prohibition will be impracticable. After marriage husband and wife as of necessity must live together; natural propensities cannot be suppressed; there is no means of preventing married couple from enjoying the pleasure if they are inclined to do so.

(2) Creation of public opinion on the matter will depend upon spread of education among the masses. If the people are sufficiently educated and capable of understanding the evil effect of sexual intercourse in the case of immature girls, such intercourse will cease in course of time. The interference of any outside agency will not be required.

(3) Putting off marriage beyond 13 by law will no doubt be an effective means of preventing cohabitation with immature females. Such legislation will seriously interfere with the social custom and religious inclination of the country as also affect the economic condition of the people. Propriety of such a measure is open to grave objection and if any attempt be made to push forward a legislation in that direction it will be opposed by all communities, castes and classes in the country, as is evident from the widespread opposition to the Bill proposed on the subject. Delaying marriage by legislative prohibition is by no means desirable or necessary. The Census Reports from 1871 to 1921 show that numbers of married persons among both females and males at certain age, say up to 15 years of age, are gradually diminishing. It may confidently be hoped that this tendency, which is due to spread of education among the masses and economic conditions and other circumstances, will be on the increase and no extraneous agency will be needed in order to delay marriage of girls.

5. In this part of the country girls generally attain puberty at the age of 12 to 13. According to circumstances of the parents, there is much divergence in this respect. Among the well-to-do people who live in comfort and affluence the children are well-fed and carefully looked after and enjoy good health, are properly developed; they attain puberty at comparatively earlier age than those who live in poverty and are of stunted growth and are not well developed for want of proper nourishment. There is some difference as to age at which puberty appears among different classes of people on account of their different mode of living and the profession followed by them.

6. (1) Cohabitation before puberty is very rare. In exceptional cases where there is considerable delay in the appearance of menses, if the female be otherwise capable of sexual intercourse, the non-appearance of the menstrual course does not stand in the way.

(2) Appearance of menses is generally looked upon as the sign of woman's fitness for cohabitation and when the menstrual course sets in, regular intercourse generally follows. There is nothing to put a stop to it except occasional illness or similar other reasons.

(3) In sexual intercourse between husband and wife capacity of the wife is the sole criterion without any reference to her age. In the absence of any statistical account on the subject which is not practicable to obtain, in how many instances restriction as to age is infringed cannot be said. So no answer can be given on the point. The law of 1925 has not been in operation long. It is not possible to say anything about its working. It is however against rules of Society and religion for a female to cohabit with any one except her husband. Among prostitutes young girls are nurtured for immoral purposes; they are apt to submit to intercourse with men in violation of the provisions of law. It is very likely that the law has not produced any effect on them.

The infringement of law on this point, if any, cannot be detected. Such cases do not come to court as no one considers it immoral or illegal for a male to have such intercourse with a girl if she is otherwise fit for the purpose.

7. The early consummation of marriage among the Hindus is due to religious injunctions, as also according to time honoured customs of the

country. As regards the Mohammadan community with whom marriage is a contract there is no age limit prescribed by law for marriage. The practice to contract early marriages of boys and girls is universal. It is difficult to put a stop to such a practice all on a sudden.

There are other theories in the shastras which enjoin sexual intercourse between husband and wife as soon as the menstrual course sets in. Non-performance of this duty is considered as sin in this world as also in the next, as the text-books on this subject will show.

8. Garbhadan ceremony is equally performed amongst the Hindus of all fitness for sexual intercourse though in small number of cases it may not if the menses appear before marriage, it is due on the first occasion of the monthly course after marriage. In that case it is very difficult to say whether the husband wait till the appearance of the monthly course and celebration of the ceremony as natural propensities can rarely be stopped or suppressed.

The rules of shastras make it obligatory to perform the ceremony within 16 days of the first appearance of the menses. If that be impracticable for any reason, the ceremony is to be done within the time after its next appearance. Until the ceremony is performed girl remains impure and cannot take part in any religious functions. This practice is universal in all castes of Hindus in Bengal.

9. Attainment of puberty is generally sufficient indication of physical fitness for sexual intercourse though in small number of cases it may not be so. Usually females are quite capable of cohabitation with their husbands as soon as menstruation is established and they are also capable for conception and giving birth to healthy children. There is no such doctrine in medical science that the offsprings of young mothers will necessarily be weak and that youth of mothers is the cause of deterioration of their health after child birth. The assumption that children born of immature mothers and that mothers suffer in health after child birth are not warranted by any medical authority.

10. As the masses are ignorant and illiterate there are very few females who can understand the sexual science and form an intelligent idea as to when intercourse is proper and what may be its consequences before yielding to natural propensities for it. Mothers of children may from experience have some idea on the matter. But one who has no previous experience of it can scarcely be expected to realise the effect of the act when she submits to the importunities of man or of her own desire cohabits with him. The age at which she becomes physically fit for sexual intercourse with male should be the age of consent for marital purposes, and in other cases the age should not be less than what has been embodied in the Act of 1925. There will be no harm if it be raised to 16 to correspond with the age limit for kidnapping and other offences relating to females. It will be hard if there be an advance even in 13 years.

11. I am unable to answer this question.

12. I am not convinced that early consummation and early maternity are the sole causes of deaths of mothers and children or that they in any way affect the intellectual or physical progress of the people. From sanitary reports and the report of Health Officers and others it is clear that infant mortality and mortality among mothers after child birth are due principally to poverty, want of supply of milk and living in unhealthy places. Such mortality are fewer among well-to-do persons who live in better environments and have better style of living.

13. The people of the country view with alarm the provisions of the Act of 1925, concerning marital offence—though the distinction made between and extra-marital cases is appreciated by them. There is no public opinion in favour of extension of age in marital cases. There would be no opposition to the increase of age in other cases. The masses, whether Hindu or Mahommedan or any other community, will not favour further advance.

14. Naturally women are in favour of consummation of marriage of their children after the attainment of puberty as they do not see anything wrong in the act when the parties are deemed physically fit for it. There is also an idea that if the sexual functions are not exercised abstinence may affect health and cause other injuries.

15. The question of age of girls increases under sections 375, 376, 368 and other like cases often giving rise to considerable difficulties, as the date of birth among the class of people who are usually concerned in such cases cannot be proved by any definite evidence, except medical opinion, which is not always a safe guide. Institution of Birth Register may solve the difficulty if it be regularly kept and preserved.

16. Whatever age may be fixed difficulty of proving it will remain the same unless provision for compulsory Birth Register be introduced.

17. The element of mutual assent in marital offences and its absence in other cases makes world of difference between the two kinds of offences. It is very difficult to check natural propensities when the means of satisfying the same are so easy.

The punishment for marital offence provided in the Act of 1925 should be lowered and punishment prescribed in cases in which the wife is under 12 should be lowered.

18. Some difference in the procedure of trial of offences of both kind is desirable. In the case of marital offences, instead of the trial being in open Court should be held *in camera* and the Police Officer whatever may be his status should have no hand in any enquiry that may be necessary. In all respects the trial should be such as to cause no harassment or inconvenience to the parties and witnesses as the offence is no offence from social or moral or religious point of view but is technically so being creation of law passed in defiance of public opinion and in contravention of existing social, moral and religious rules.

19. Marital offences will rarely come to Court unless the injury caused is severe and causes irremedial harm to the girl. Any provision for bringing it out would result often in the harassment of innocent people and oppression by the Police.

20. Raising the Age of Consent in marital offence still further will be a perpetual source of terror and mar all peace and happiness in domestic life and create a dread of prosecution or persecution by the enemy and oppression by the Police from which no one high or low will be free. Fixing higher age limit will serve no useful purpose whatever unless means can be devised for changing idea of people about the benefit or otherwise desirable from delayed sexual intercourse.

If the minimum age of marriage be fixed by legislation, either making it an offence to give a girl in marriage under certain age or making the marriage null and void in that case the opportunity for an immature girl coming in contact with a male and having sexual intercourse with him will be practically shut out. This will create social and religious and economic difficulties among all classes of people especially amongst Hindus and Mahomedans. The revival Bills introduced in the Councils by members who seem to be ignorant of the real condition of the society in general have evoked serious oppositions all over the country. Such Bills if passed into law will produce no substantial benefit, but will be the cause of irremedial injury to the people at large. Such legislation is not at all expedient or desirable. In my opinion the age limit in marital cases need not be disturbed and there should be no interference with the marriage laws of Hindus, Mahomedans and other communities as regards the age of marriage as from the Census reports it is evident that there is a growing tendency to delay marriages of both males and females and it can be confidently expected, that the time is not distant when the marriageable age in girls will reach the minimum which the legislature is so anxious to fix now. Amongst the Hindus, marriage is not a contract. The tie is everlasting both in this world and the world to come.

All the shastras on the subject enjoins marriage of girls before attainment of puberty. Non-observance of the precept of the shastras is a sin. All Hindus are bound to obey the dictates of the Dharma shastras. Amongst the Mahomedan though there is no such religious injunction, the universal practice is to dispose of girls in early marriage due to economic and other circumstances of the community. Public opinion will not favour raising of Age of Consent nor fixing the minimum age for marriage. .

21. Progress of social reform by means of education and social propaganda are necessary, but this will depend upon spread of education among the masses. The best means will be to devise means for imparting education to the people before any effective social or religious reform can be expected to be made.

Penal legislation cannot achieve the object in this country and there seems to be no precedent elsewhere that legislative interference has been successful in effecting reform in so vital a matter affecting almost the major portion of the population of the country.

Written Statement, dated the 24th August 1928, of BHAGABAT PRASANNA SAHA SANKHANIDHI (Municipal Commissioner of the Dacca Municipality).

1. Yes.

2. (i) Nil.

(ii) The circumstances which justify making the advance of the present law as to the Age of Consent are:—

(a) Most of the girls attaining the age-limit as specified in the Indian Penal Code, are not, truly speaking, wise enough to understand the effects, good or evil, of cohabitation of that age.

(b) They are, moreover, not yet then properly developed in all parts of their physique, and as such, are likely to be injured in respect of health, as also generally to give birth to weak children.

3. Within marital state, the cases of rape or seduction are rare in our part of the country. The amendment of the law made in 1925, raising the Age of Consent to 14 years, has considerably succeeded in reducing cases of rape or seduction outside the marital state. But we hope that there too, the Age of Consent need be raised to the proposed limit (i.e., from 16 to 18 years outside marital state) so as to prevent those undesirable cases still to be come across, though less oftener.

4. Yes, the said amendment has to a considerable extent postponed the consummation of marriage. It has also exercised great influence on the public minds towards stimulating their opinion in that direction and the public, in general, are now conscious of the good effects of marriage of girls after the prescribed age-limit. In majority of cases, however, girls are married at not earlier than 13.

5. The usual age at which girls in our part of the country attain puberty is from 14 to 15. But cases are not infrequent where this may be found to differ in respect of girls belonging to different castes, communities or classes of society. Generally girls of upper classes who are bred and brought up amidst luxury, as also those who move and have their being in so-called enlightened environments show premature signs of puberty. On the contrary, amongst backward sections of the community, puberty is generally attained not earlier than 16.

6. Cases of cohabitation before 13 years are indeed rare. But those before the girls attain puberty are not quite uncommon. Cohabitation after the attainment of puberty is almost a common occurrence.

7. No. There is no express or any hard and fast religious injunction to which the practice of early consummation should be attributed.

8. Yes, it is performed. In higher classes of society, it is generally anterior to the consummation of marriage. But the case seems to be the

reverse so far as the backward or rather the less enlightened sections of the society are concerned. Amongst them, it is performed very often before the girls attain puberty; but not so as regards girls of the higher classes.

9. No. The proper age at which girls' physical development may be considered to be enough to justify consummation without any injury to her own health and that of her progeny should be 16 years or at least after one full year has elapsed since her attaining puberty.

10. At the age of 16.

11. Experience shows that in majority of cases, cohabitation before puberty, or, after puberty but before full physical development often results in injury to her health or body as also prejudicially affects her progeny.

12. Yes, that is to be sure. Early consummation and early maternity in consequence thereof are to a considerable extent responsible for high percentage of maternal and infantile mortality, as also for some other results which vitally deteriorate the intellectual and physical progress of the people of this country.

13. Since the amendment of the law in 1925, public opinion, so far as the enlightened and intelligent sections of the community are concerned, has greatly developed in favour of an extension of the Age of Consent both in marital and extra-marital cases. But this seems to be otherwise, or rather it has not got so much favour with the ordinary classes of people, at least, in marital cases.

14. Most probably not.

15. Yes. The Age of Consent should be fixed not earlier than the age at which girls of this part of the country generally attain puberty.

16. The alleged difficulty may, to a great extent, be minimised by raising the Age of Consent above 14 years.

17. Yes. The punishment in extra-marital cases should be more severe than in marital cases.

18. Yes. The procedure of trials for offences within and without the marital state should be differentiated from each other.

19. Yes. In my humble opinion, if responsible and educated gentlemen of the locality be entrusted with the task of primary investigation, better and more impartial results may be expected than from ordinary Police investigation.

20. Public opinion would favour rather a higher Age of Consent than the fixing of a minimum age of marriage.

21. I would prefer to rely on the progress of social reform by means of mass education and social propaganda.

In my personal experience, and so far as I have been able to study general cases, I strongly do cherish the hope that a social reform by means of public education and social propaganda will surely minimise the alleged undesirable occurrences and save the public from moral degeneration. Penal legislation to secure the law-object in view will only terrorise people into obeying it without any conscious realisation of its good effects rather than infusing into them a high sense of regard for the general moral elevation.

In conclusion, I beg to concur with the resolution adopted by the Dacca Municipality in their extraordinary meeting held on 10th August 1928.

**Written Statement, dated the 7th August 1928, of Sahitya Saraswati
SUKHENDU BIKASH ROY VIDYABINOD, Zeminder, Pleader,
Recruiting Officer, I. T. F., Vice-President, Sahitya Parishat.**

1. There is some discontent with the state of laws as to the Age of Consent. The reason is, that during trial we are faced with difficulties to determine the age of a girl, whether she is under 14 or some months above

14 years. There is a marked difference of development between the girl of 14 and above 16. Even in determination the medical men are deeped by the stunted growth or by abnormal development.

2. In my opinion there ought to be an advance on the present law, on the happening of which, the number of rape cases will decrease, as the culprit will not be able to take advantage of the consent of a girl below 16 years.

3. The crimes of seduction is frequent in our part of the country but not rape.

4. The amendment of 1925 has not been effective in protecting the married girls against cohabitation with husband by postponing the consummation of marriage or by putting it off beyond 13. To make it effective, only course left is to taboo the marriage below 13. Otherwise there is no other way to penalise cohabitation with wife except by raising the Age of Consent.

5. In my part of the country, the girls attain puberty ordinarily after 13 years. Especially in the labour class, the girls attain puberty after 14. Among the fashionable classes of people where the moral atmosphere is corrupted the girls have been found to attain puberty at 12.

6. Cohabitation is not uncommon in this part of the country if marriage takes place before the attainment of puberty. It is common after puberty whether she is below 13 or above 13. I have conducted some cases where girls have been cohabited before they attained puberty.

7 and 8. I do not attribute the practice of early consummation of marriage to any shastric injunction. There is Garbhadan ceremony in our country. It means that it will be performed after the girl gets her first menstruation after marriage and the marriage will be consummated on the night of the ceremony. Now-a-days the ceremony is performed long after puberty because the marriage takes place several years after puberty.

Although the shastric injunction of "Govil, Porashor and Monu" is to the effect that the cohabitation is compulsory with wife after *Adya Ritu* first menses, yet the greatest Indian medical authority Sushrut says "that the garbhadan must not be done with a girl who is below 16". He writes in 'Shushrut Sutrostan' "if there be conception in a girl below 16 by a male below 25 that conception will be abortive, or the child must not live long or if it at all continues to live it becomes weak and sickly".

9. I do not think the puberty is sufficient indication of physical maturity to justify consummation. At 16 after puberty a girl's development may be considered to be enough to justify consummation without any injury.

10. I believe that at the age of 16, girl will be able to give an intelligent consent.

11. Yes. I have come across some cases in my professional career.^o There were several injuries in the organs, both inside and outside.

12. I consider early consummation and early maternity are responsible for high maternal and infantile mortality.

13. Besides among the considerate public, there has been no further development of public opinion in favour of an extension of the Age of Consent.

14. Yes. The women favour early consummation of marriage of their children.

15 and 16. Several difficulties have been experienced in determining the age of girls in connection with offence under Sections 375 and 376, I. P. C. The difficulty or margin of error in determining the age may be materially reduced if the age be raised to above 14.

17. In extra-marital offence, prescribed punishment is condign. In case of marital offence transportation is very severe. The highest term may be up to 5 years.

18 and 19. In marital offence, the cases ought to be tried *in camera*. I cannot suggest any safeguards beyond those existing now.

20. Legislation fixing the minimum of age of marriage may be more effective than the penal legislation fixing the higher Age of Consent in case of marital offence. But that legislation is fraught with several difficulties and not within sight.

21. I do not rely on the progress of social reforms by means of education and social propaganda. India shall have to wait for another century, before she sees her children as much educated as would make them feel the necessity of social reforms without intervention of the Government. I am a social reformer and my experience has strengthened my conviction that the penal laws will be more efficacious than the propagandist's dialectics.

Written Statement, dated the 5th December 1928, of Mr. DURGADAS GUHA RAY, B.A., B.L., Manager, Pathia Raj, Jhawal, Mymensingh.

1. Yes, there is, at least among the educated classes.

2. As regards the Age of Consent I think it is time to make an advance upon the present law. It will have a great educative value to raise the age of marriage, to prevent early consummation of marriage and to instil terror into the minds of those miscreants who indulge in the crimes of abduction and seduction.

3. Yes, in this district of Mymensingh these crimes are rather frequent.

The amendment of 1925 has had the effect of securing convictions in much greater number of cases of these crimes outside marital state than formerly.

To make the law more effective—

(1) The Age of Consent may be raised and

(2) Drastic administrative measures may be undertaken.

4. Very difficult to say. I have no knowledge.

(1) Certainly it has, to some extent, created public opinion and to that extent perhaps checked early consummation of marriage.

(2) It has produced undoubted effect in discouraging marriage before 13 among the literate section of the public.

Better effect may be had by raising the Age of Consent still higher.

5. Among the upper classes girls attain puberty at between 14 and 15. Among the lower classes, earlier by about a year.

6. Among low classes of Mahomedans these practices sometimes do occur and I have seen some cases of this nature coming to court.

7. The talk of religious injunction in these matters is all rubbish. Nowhere I have seen these things having been done under religious injunctions.

Wherever they occur they occur through the promptings of beastly propensities.

8. I have never heard the word 'Gaona' before this. I heard the word 'Garbhadan' during the great agitation in 1890-91 over this same question, and never before that, and heard it mentioned after that agitation only by way of ridicule.

I never saw this 'Garbhadan' ceremony ever being observed in practice.

9. The attainment of puberty by a girl does not certainly indicate that she is fit for consummation of marriage.

In my opinion a girl attains physical development to justify consummation of marriage after she is 16 and never before that age.

10. Not before she is 18.

11. During my practice as a pleader I have come across numerous cases in which forced cohabitation upon young girls have resulted in injury or even death. This is a very common experience in criminal courts.

It is every day experience to find young girls of 14 or 15 who looked quite healthy before marriage, losing their health and vigour after it. Sometimes they are found in ruined health with a sickly baby in arms. This is seldom found among girls of the upper classes who are now generally married at about 16.

12. I do consider that early marriage, early consummation of marriage and early maternity are mainly responsible for high maternal and infantile mortality.

These practices prejudicially affect the health not only of the girls but of the boys also, and are retarding the intellectual and physical progress of the people.

13. In this part of the country the educated classes who generally create and spread public opinion, are certainly in favour of an extension of the Age of Consent both in marital and extra-marital cases.

As I have said this is to be found among the educated classes. But the uneducated classes have a sure tendency to imitate the educated people, however they may decry any innovation at its first appearance.

14. The women in this part of the country certainly do not favour early consummation of marriage of their children and as far as I know they positively dislike it.

15. There is the difficulty. The difficulty may be minimised—

(1) By raising the Age of Consent.

(2) By stringent rules regarding birth registers.

16. The difficulty may be minimised to a very great extent by raising the Age of Consent to 15 years in marital cases and to 18 years in extra-marital cases.

17. Yes, I would differentiate between extra-marital and marital offences of this kind when the girl in question happens to be above 13. Before that age there should be no differentiation. I would like to provide 2 years' imprisonment for the husband when the wife is above 13 but below 15. I would suggest imprisonment extending up to 7 years for the husband when the wife happens to be below 13.

I would provide imprisonment extending up to 14 years, forfeiture of property, and whipping for extra-marital offences of this nature when the girl in question happens to be less than 18.

18. The punishments suggested will entail different procedure; otherwise no difference in procedure is necessary.

19. No safeguard beyond those existing at present are necessary or likely to be effective.

20. Penal legislation fixing a higher Age of Consent for marital cases will have a great educative influence in raising the marriageable age of girls; it will also check early consummation of marriage.

Those who are opposed to reforms owing to age long habits or from interested motives (i.e., priestly class) will dislike both raising the Age of Consent and fixing the age of marriage. If any choice is given them, they will certainly like to have raising the Age of Consent rather than fixing the age of marriage.

There are others who would not oppose raising the Age of Consent but will not like fixing the age of marriage. There are others again who would welcome both the reforms.

I would raise the Age of Consent to 15 in marital cases and 18 in extra-marital cases and would also like to fix the age of marriage of girls at 14 and above with provision to grant permission for earlier marriage of those girls whose parents or *bond fide* guardians will apply for it.

21. To secure the object in view I would rely on both—on the strengthening of the penal law and on the progress of social reform by means of education and social propaganda.

Notes on Visits to Villages by the Age of Consent Committee in Dacca.

The Committee visited Harirampur and Mirpore—two large adjacent villages—on the morning of the 10th December. The population of these villages, including the outlying hamlets is about 5,000. About 150 people gathered including them Mr. Ashvini Kumar Chowdhry, Secretary of the local Hindu Sabha and President of the Hariram Union Board, Mr. Raman Mohan Poddor, President of the Mirpore Union Board, Mr. Muluk Chand Byopori, Trader, Harirampur, and Mohd. Anwarullah, Head Moulvi, Sudhat H. E. School, Mirpore.

Enquiries were made regarding the usual age of marriage and the age of consummation in those villages and the people were asked whether an advance was necessary or practicable. It was found that the Brahmins and the Kayasthas were most advanced in those matters. The age of marriage obtaining amongst them was from 14 to 18. The age at which the girls attained puberty was 13 or 14 and the consummation generally took place immediately after marriage or at the first menses after marriage. The age of first maternity generally appeared to be about 16 amongst them. These communities thought that they did not stand in need of any legislation but if any age was to be fixed they would recommend that the age of marriage may be fixed at 14 and that of consummation at 16.

The Shahas, Namshudras, Karamkars and other Hindu communities were found to practise early or pre-puberty marriages. The age of marriage amongst them ranged from 8 to 12. Amongst the Shahas or Vaishyas puberty occurs at about 11 and 12 and amongst the Namshudras and others at about 13 and 14. The "Garbhadan" ceremony is performed within 16 days of the first menses, and the girl is sent immediately to her husband, but in no case does the consummation take place before the girl attains puberty. The first child-birth is stated to occur among these people at about the age of 14 or 15. The Namshudras said that they had no objection to the age of marriage being fixed at 14 and of consummation at 16. The Karamkars stated that the age of marriage may be fixed at 10 and the Age of Consent at 13 or 14.

The Shahas pointed out that in some cases the parents were obliged for economic and other considerations to marry all their daughters at the same time, if exemptions could be allowed in suitable cases an age for marriage might be fixed at 14, and for consummation at 15.

Among the Mohammedans, the practice here found is to marry their girls between 8 and 12. The age of puberty is 12 and the consummation takes place immediately after marriage but not generally before puberty. The girl usually becomes a mother for the first time at about 14 or 15. They recommended that the age of marriage may be fixed at 10 and that of consent at 14.

The people present said that they had observed evil consequences following early consummation and early maternity and that many girls who had become mothers at an early age and their progeny had suffered in health. They also said that there have been several cases of tuberculosis among the females.

Widow re-marriage was found to obtain amongst fishermen, Karamkars, Mohammedans and in no other castes. The Namshudras had recently passed a resolution in a body in its favour.

From the individual cases that were examined it was found that boys of 16 or 17 from among the Vaishyas and of 24 from among the Kayasthas present were still unmarried. It was generally stated that Brahmin and Kayasthas' girls were stronger than other girls.

On 10th December 1928, Mrs. Nehru and Dr. Beadon visited two Hindu houses in the village of Harirampur and two Mohammedan houses in village Mirpore. They were told that marriage at 10 or earlier was the rule, and consummation took place in most cases immediately after puberty.

There were no schools for girls in either of these two villages. There had been a school but a few years ago this school was discontinued owing to lack of pupils. The education of boys in these two villages is also very backward,

the number of literate men in the villages being infinitesimal. The total population of both villages is about 5,000.

The Mohammedan women who were questioned stated that they were bound by the custom of the village but would personally prefer to have marriage delayed till after puberty.

In one of the houses which belonged to a Vaishya Doctor we met with a girl of 16 unmarried and another of 13 who was expecting. We were told that marriages were generally late amongst the Kayasthas, but amongst the lower classes marriages took place earlier. The girl of 13 who was about to become a mother being from the weaver class.

